IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-06-2014

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

AND

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

WRIT APPEAL Nos.2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516 & 2517 OF 2013 AND 189, 275, 276, 277 OF 2014

W.A.No.2508/2013 :

M/s.Buhari Sons Pvt.Ltd.,
rep.by its Director Mr.M.B.Haja,
No.1&2, Poonamallee High Road,
Chennai-600 003. ... Appellant

-vs-

1. The State of Tamil Nadu,
represented by Principal Secretary to Government,
Revenue [LD-I(1)] Department,
Fort.St.George, Chennai-600 009.

2. The District Collector,
Chennai District,
Singaravelar Maaligai, Rajaji Salai,
Chennai-600 001.

3. The Administrator General
and Official Trustee of Tamil Nadu,
High Court Campus,
Chennai-600 104.

4. Chennai Metro Rail Limited,
represented by its Managing Director,
Harini Towers, No.7, Conran Smith Road,
Gopalapuram,
Chennai-600 086. ... Respondents

Appeals under Clause 15 of Letters Patent.

* * * *

For appellant in W.A.No.2508/2013 : Mr.A.Vijay Narayan,
Senior Counsel,
for Mr.M.Abdul Nazeer.

For appellant in W.A.No.2509/2013 : Mr.R.Muthukumaraswamy,
Senior Counsel,
for Mr.M.Abdul Nazeer.

For appellant in W.A.No.2510/2013 : Mr.R.Natarajan

For appellants in
W.A.Nos.2511 & 2512/2013 : Mr.AR.L.Sundaresan,
Senior Counsel,
for Mr.K.F.Manavalan.

For appellant in
W.A.Nos.2513 to 2517/2013 : Mr.Anirudh Krishnan

For appellant in W.A.No.189/2014 : Mr.AR.L.Sundaresan,
Senior Counsel,
and Mr.P.Sidharthan,
for Mr.Sai Krishnan.

For appellants in
W.A.Nos.275 & 276/2014 : Mr.M.Abdul Nazeer

For appellant in W.A.No.277/2014 : Mr.Raja Kalifulla,
Senior Counsel,
for Mr.M.Abdul Nazeer.

For Respondents 1 & 2 in all W.As.: Mr.P.H.Arvind Pandian,
Addl.Advocate General,
assisted by Mr.C.V.Shailendhar.

For Chennai Metro Rail Ltd.
in all W.As. : Mr.R.Thiagarajan,
Senior Counsel,
for Jayesh B.Dolia &
M.Sivavardhanan.

For Administrator General and
Official Trustee of Tamil Nadu
in all W.As. : Mr.C.Manickam.

For R5 in W.A.No.2510/2013 : Mr.C.Johnson.

COMMON JUDGMENT

V.Dhanapalan,J.

All these appeals have been filed against the common order of a learned single Judge of this Court, dated 19.12.2013, dismissing the Writ Petitions, challenging G.O.Ms.No.380 Revenue [LD1 (1)] Department, dated 28.09.2013, which culminated in the orders of the District Collector, Chennai, dated 30.09.2013, directing the appellants to vacate the land and hand over possession of the premises to the Tahsildar, Fort-Tondiarpet Taluk, Chennai.

2. Case of the appellants before the writ court was that they were the lessees/sub-lessees/tenants of the building constructed by a Trust, namely, Rajah Sir Ramasamy Mudaliar Choultry, situated opposite to the Central Railway Station, Chennai, and when they are in possession and enjoyment of the same, the Government of Tamil Nadu passed a Government Order in G.O.Ms.No.380, Revenue, [LD1 (1)] Department, dated 28.09.2013, pursuant to which the District Collector, Chennai, by his orders, dated 30.09.2013, directing them to vacate the land and hand over possession of the premises to the Tahsildar, Fort-Tondiarpet Taluk, Chennai, on the ground that the land was required for Chennai Metro Rail Project with larger public interest to Chennai Metro Rail Limited (in short CMRL), for implementing the project, which action, according to the appellants, was illegal and unjustified.

3. According to the appellant in W.A.No.2510 of 2013, namely, S.V.R.Ramprasad, he was appointed as a co-trustee of Rajah Sir Ramasamy Mudaliar Choultry by an order of this Court in O.S.A.Nos.66 & 67 of 2000, dated 05.06.2000; Rajah Sir Ramasamy Mudaliar had submitted a proposal to construct a choultry in Chennai at the cost of about Rs.30,000/- before the Government on 10.03.1888 and sought a piece of land for that purpose and in consideration of that laudable objective and upon taking into account the various charitable activities of Rajah Sir Ramasamy Mudaliar rendered to the society, the Government had come forward to allot a piece of land measuring an extent of 1.33 acres, now comprised in T.S.No.41, Vepery Village, Fort-Tondiarpet Taluk, valued at Rs.3,638/- at free of cost for the purpose of construction of the choultry in that piece of land with a condition that the said piece of land shall be used for construction of choultry and on failure of fulfillment of the conditions and that the said grant of land would be liable for resumption; the choultry building so constructed by the founder Rajah Sir Ramasamy Mudaliar way back in the year 1888 has been classified as a historical and heritage building by the High Power Heritage Committee so constituted under the orders of this Court; after considering the reports submitted by the heritage committee, this Court directed the Heritage Conservation Committee to issue notice to all the buildings shown in Sl.Nos.1 to 467 in the Committee Report for preserving and maintaining such buildings without causing any damage to them; in compliance of the directions of a

Division Bench of this Court, the Heritage Conservation Committee, under the management and control of CMDA, issued a notice to the appellant, by proceedings dated 21.09.2010, thereby cautioning him to ensure safety of the said heritage building and, presently, the said heritage building is under occupation of Tamil Nadu Tourism Development Corporation. His further case is that the right to property is a constitutional right safeguarded under Article 300-A of the Constitution of India and that the Government has intruded and invaded the right of the founder trustee and there is an encumbrance existing in T.S.No.41, which cannot be ignored by the State and, hence, he prayed to allow the appeal.

4. The facts are that originally the Government of Tamil Nadu issued an order in G.O.Ms.No.168, Revenue, dated 21 May 2012, resuming the land in T.S.No.41, alleging the violation of the terms of original Grant and also on account of a larger public purpose and to hand it over to Chennai Metro Rail Limiteid, in connection with the introduction of Metro Rail at Chennai. The said Government Order and the consequential order passed by Administrator General and Official Trustee (AGOT) were challenged in W.P.No.19269 of 2012 and its batch. The Writ Petitions were allowed by a learned single Judge by his common order, dated 26.11.2012, with a direction to the Government to issue notice to the lesseees, AGOT and Co-Trustee and thereafter to pass fresh orders, taking into consideration their objections. The common order, dated 26.11.2012, was taken on appeal in W.A.Nos.70 to 88 of 2013 and 91 to 106 of

2013 before a Division Bench and the said Division Bench, by its judgment, dated 12.07.2013, allowed the appeals. The unsuccessful writ petitioners filed Special Leave Petitions before the Supreme Court, which granted leave and after recording the undertaking given by the learned Solicitor General, directed that all the affected parties should be given notices and an opportunity to respond and, accordingly, disposed of the Petitions, by an order dated 25.07.2013. Thereafter, the District Collector, Chennai, issued individual notices to the affected parties and received their response. The District Collector, after examining the objections, submitted a report to the Government with a recommendation to resume the land in T.S.No.41. The Government has examined the proposal in the light of the earlier proceedings and the objections raised by the affected parties and resolved to resume the land by an order, dated 28.09.2013, in G.O.Ms.No.380, Revenue (LD1(1)) Department. The District Collector, pursuant to the said order dated 28.09.2013, issued notices, dated 30.09.2013, directing the petitioners to vacate and hand over the premises to the Tahsildar, Fort Tondiarpet Taluk, Chennai, on 15.10.2013. The Government Order in G.O.Ms.No.380, dated 28.09.2013, and the consequential eviction notices, dated 30.09.2013, were under challenge in the Writ Petitions before the learned single Judge.

5. Resumption of the land in question vide G.O.Ms.No.380, dated 28.09.2013, as well as the subsequent order of the District Collector, Chennai, was justified by the Government, stating that the purpose for which the grant

was given was no more in existence and that the land belonged to the Government; hence, there was no need to take recourse to acquisiton of the land and, as such, the appellants, being the lessees/sub-lessees/tenants, were not entitled to challenge the process of resumption.

6. The stand of Chennai Metro Rail Limited was that Chennai Metro Rail Project was managed by the Government of India and the State Government by way of equal equity contribution and suordinate debt; CMRL received loan from Japan International Cooperation Agency; CMRL required the subject land for railways in public interest and, therefore, any delay of the project would escalate the cost and defeat the public purpose.

7. Upon hearing the rival submissions made by the parties, the learned single Judge dismissed all the writ petitions, challenging the legality and correctness of the orders, directing resumption of land, on the ground that the benefit to public would outweigh the loss to the petitioners. By dismissing the writ petitions, the single Judge directed Chennai Metro Rail Limited to assess the reasonable compensation payable to the petitioners, with the assistance of the District Collector, Chennai, and the Chief Engineer, Public Works Department, and pay the same to the petitioners on or before 10th January,2014. Aggrieved over the said dismissal, these appeals are filed by some of the writ petitioners.

8. Mr.A.Vijay Narayan, learned Senior Counsel appearing for the appellant in W.A.No.2508/2013, would contend that resumption of subject

lands on the ground of violation of conditions of the grant was wholly illegal. According to him, should there be a requirement of the lands for a public purpose, the initiation of proceedings under the Land Acquisition Act is a *sine qua non* and, therefore, the action of the respondents in resuming the lands by way of government orders is *non est* in law and a violation of the provisions of Article 300-A of the Constitution of India and Sections 10,25 and 29 of the Official Trustees Act,1913.

9. The learned Senior Counsel, in support of his submissions, has relied on the following decisions :

(i) Bishan Das and others vs. State of Punjab and others, reported in AIR 1961 SC 1570 :

> "(11) We consider that both these contentions are unsound and the petitioners have made out a clear case of the violation of their fundamental rights. There has been some argument before us as to the true legal effect of the sanction granted in 1909 to Ramji Das subject to the conditions adverted to earlier: whether it was a lease in favour of the firm Faquir Chand Bhagwan Das; whether it was a licence coupled with a grant or an irrevocable licence within the meaning of s. 60(b) of the Easements Act, 1882. These are disputed questions which we do not think that we are called upon to decide in the present proceeding. The admitted position, so far as the present proceeding is concerned, is that the land belonged to the State; with the permission of the State Ramji Das, on behalf of the joint family firm of Faquir Chand Bhagwan Das, built the dharmasala, temple and shops and managed the same during his life time. After his death the petitioners, other members of the joint family, continued the management. On this admitted position the petitioners cannot be held to be trespassers in respect of the dharmasala, temple and shops; nor can it be held that the dharmasala, temple and shops belonged to the State, irrespective of the question whether the trust created was of a public or private nature. A trustee even of a public trust can be removed only by procedure known to law. He cannot be removed by an

executive fiat. It is by now well settled that the maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law of this country; see Thakoor Chunder Parmanick v. Ramdhone Bhuttacharjee, 6 Suth WR 228; Beni Ram v. Kundan Lall, 26 Ind App 58 and Narayan Das Khettry v. Jatindranath, 54 Ind App 218; (AIR 1927 PC 135). These decisions show that a person who bona fide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by the application of the maxim quicquid plantatur solo, solo cedit. It is, therefore, impossible to hold that in respect of the dharmasala, temples and shops, the State has acquired any rights whatsoever merely by reason of their being on the land belonging to the State. If the State thought that the constructions should be removed or that the condition as to resumption of the land should be invoked, it was open to the State to take appropriate legal action for the purpose. Even if the State proceeded on the footing that the trust was a public trust it should have taken appropriate legal action for the removal of the trustee as was opined by the State's Legal Remembrancer. It is well recognised that a suit under s. 92, Civil Procedure Code, may be brought against persons in possession of the trust property even if they claim adversely to the trust, that is, claim to be owners of the property, or against persons who deny the validity of the trust.

(14) Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary

invasion by the executive of peaceful possession of property. As pointed out by this Court in Wazir Chand v. The State of Himachal Pradesh (1), the State or its executive officers cannot in- terfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In Ram Prasad Narayan Sahi v. The State of Bihar (2) this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only. The reasons given for this extraordinary action are, to quote what we said in Sahi's case (supra), remarkable for their disturbing implications.

(15) For these reasons, we allow the application with costs and a writ will now issue as directed."

(ii) Smt. Chandra Kali vs. Managing Committee Aryasamaj, Meerut and others, reported in AIR 1987 Allahabad 341 :

"17. There is, however, one aspect of the matter which has to be clarified in this order. Although the Official Trustee is the sole trustee of the property vested in the Official Trustee, yet he has to seek order from the Court. Section 25 of the Official Trustees Act makes it clear that the High Court may make such orders as it thinks fit respecting, any Trust property vested in the Official Trustee or the income or produce thereof. Even in the matter of the income or the produce of vested property the High Court has power to make order or give directions. The sale of a Trust property is certainly the sale of the corpus and it is all the more necessary that the High Court's permission ought to be obtained by the Official Trustee before he disposes of any immovable property.

18. Section 29 also says that nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to any other person if the Court so

directs. Since the transfer by auction sale in the present case is in favour of a person other than original transferee or any other lawfully appointed trustee it can only take place if the Court so directs. It is, therefore, evident that to effect a valid transfer of a trust property which has vested in the Official Trustee the latter has to seek direction from the Court for its transfer. If .the Official Trustee feels that it is in the interest of the Trust to dispose of any immovable property of the Trust he can always seek direction from the Court. My attention has not been drawn to any paper by which Court's direction was sought for the transfer of the aforesaid immovable property. I am of the opinion that unless there is a direction by the Court or an order by the Court within the meaning of Sections 29 and 25 of the Official Trustees Act, 1913, no Trust property can be transferred by the Official Trustee."

(iii) K.T.Plantation Pvt. Ltd. and another vs. State of Karnataka, reported in AIR 2011 SC 3430:

"115. Principles of eminent domain, as such, is not seen incorporated in Article 300A, as we see, in Article 30(1A), as well as in the 2nd proviso to Article 31A(1) though we can infer those principles in Article 300A. Provision for payment of compensation has been specifically incorporated in Article 30(1A) as well as in the 2nd proviso to Article 31A(1) for achieving specific objectives. Constitution's 44th Amendment Act, 1978 while omitting Article 31 brought in a substantive provision Clause (1A) to Article 30. Resultantly, though no individual or even educational institution belonging to majority community shall have any fundamental right to compensation in case of compulsory acquisition of his property by the State, an educational institution belonging to a minority community shall have such fundamental right to claim compensation in case State enacts a law providing for compulsory acquisition of any property of an educational institution established and administered by a minority community. Further, the second proviso to Article 31A(1) prohibits the Legislature from making a law which does not contain a provision for payment of compensation at a rate not less than the market value which follows that a law which does not contain such provision shall be invalid and the acquisition proceedings would be rendered

void.

116. Looking at the history of the various constitutional amendments, judicial pronouncements and the statement of objects and reasons contained in the 44th Amendment Bill which led to the 44th Amendment Act we have no doubt that the intention of the Parliament was to do away with the fundamental right to acquire, hold and dispose of the property. But the question is whether the principles of eminent domain are completely obliterated when a person is deprived of his property by the authority of law under Article 300A of the Constitution.

PUBLIC PURPOSE

117. Deprivation of property within the meaning of Art.300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known. The concept of public purpose has been given fairly expansive meaning which has to be justified upon the purpose and object of statute and the policy of the legislation. Public purpose is, therefore, a condition precedent, for invoking Article 300A.

COMPENSATION

118. We have found that the requirement of public purpose is invariably the rule for depriving a person of his property, violation of which is amenable to judicial review. Let us now examine whether the requirement of payment of compensation is the rule after the deletion of Article 31(2). Payment of compensation amount is a constitutional requirement under Article 30(1A) and under the 2nd proviso to Article 31A(1), unlike Article 300A. After the 44th Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the

legislative policy. Article 300A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

121. We find no apparent conflict with the words used in Entry 42, List III so as to infer that the payment of compensation is inbuilt or inherent either in the words "acquisition and requisitioning" under Entry 42, List III. Right to claim compensation is, therefore, cannot be read into the legislative Entry 42 List III. Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a pre-condition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that Article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.

122. Article 300-A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300-A, Parliament has only borrowed Article 31(1) [the "Rule of law" doctrine] and not Article 31(2) [which had embodied the doctrine of Eminent Domain]. Article 300-A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive. The legislation providing for deprivation of property under Article 300-A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus, in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other

> provisions of the Constitution as indicated above. At this stage, we may clarify that there is a difference between "no compensation shall be paid". However, there could be a law awarding "nil"compensation in cases where the State undertakes to discharge the liabilities charged on the property under acquisition and onus is on the government to establish validity of such law. In the latter case, the court in exercise of judicial review will test such a law keeping in mind the above parameters."

10. Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the appellants in W.A.Nos.2511 and 2512 of 2013, would submit that there is no breach of conditions of the lease or grant by the appellants and, therefore, the impugned order is vitiated in law. He would further submit that the respondents have failed to take note of the provisions of Sections 10 and 25 and 29 of the Official Trustees Act and to follow the rule of law and, in the absence of any order from AGOT Court, the respondents ought not to have proceeded with the matter for resumption of the land. He finally contends that no personal hearing or opportunity is provided to the appellants before initiating the impugned action, as directed by the Supreme Court. In support of his contentions, the learned Senior Counsel has relied upon a decision in the case of *Azim Ahmed Kazmi and others vs. State of Uttar Pradesh and another*, reported in (2012) 7 SCC 278, wherein it is held as under :

> "17. The questions which requires consideration are (i) whether the order passed by the State Government on 15th December, 2000 for cancellation of lease and resumption of possession is legally valid and (i) whether the State Government can dispossess the lessee in accordance with the Government Grants Act, 1895 without resorting to other procedure established by any other law.

18. There is clear recital in the lease deed executed in favour of the appellants by the Government of U.P. on 19th March, 1996 that the same is being done under the Government Grants Act, 1895. Clause 3 (C) of the deed reads as follows:

> "3(C) That if the demised premises are at any time required by the lessor for his or for any public purpose he shall have the right to give one month's clear notice in writing to the lessees to remove any building standing at the time of the demised premises and within two months of the receipt of the notice to take possession thereof on the expiry of that period subject however to the condition that if the lessor is willing to purchase the building on the demised premises, the lessees shall be paid for such building such amount as may be determined by the Secretary to Government of U.P. in the Nagar Awas Department."

27. For taking possession, the State Government is required to follow the law, if any, prescribed. In the absence of any specific law, the State Government may take possession by filing a suit.

28. Under the Provisions of the Land Acquisition Act, 1894, if the State Government decides to acquire the property in accordance with the provisions of the said Act, no separate proceedings have to be taken for getting possession of the land. It may even invoke the urgency provisions contained in Section 17 of the said Act and the Collector may take possession of the land immediately after the publication of the notice under Section 9. In such a case, the person in possession of the land acquired would be dispossessed forthwith.

29. However, if the Government proceeds under the terms of the Government Grants Act, 1895 then what procedure is to be followed. Section 3 of Government Grants Act, 1895, stipulates that the lease made by or on behalf of the Government to take effect according to their tenor - All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to any Section 2, shall be valid and take effect according to their tenor; any decree or direction of a Court of Law or any rule of law, statute or enactments of the Legislature, to the contrary.

11. Mr.M.Abdul Nazeer, learned counsel appearing for the appellants in W.A.Nos.2509 of 2013 and 275 and 276 of 2014, would submit that the appellants are in lawful possession of the property and the finding of the Supreme Court in this regard would fortify the stand that these appellants are in continuous possession in terms of the lease and there is no violation of the terms of lease by the appellants. It is his contention that the land alone belongs to the State and the superstructure thereon is built by the appellants by incurring huge expenditure, but, till-date, no compensation is paid and also no procedure has been bollowed by the respondents before taking the action to oust the appellants from their possession. He has relied on the following decisions:

(i) Virendra Singh and others vs. State of Uttar Pradesh, reported in AIR 1954 SC 447:

> "29. Now what effect did the Constitution have on that? In our opinion, the Constitution, by reason of the authority derived from, and conferred by, the peoples of this land, blotted out in one magnificent sweep all vestiges of arbitrary and despotic power in the territories of India and over its citizens and lands and prohibited just such acts of arbitrary power as the State now seeks to uphold.
>
> Let it be conceded (without admitting or deciding the point) that the Dominion of India once had the powers for which the Union Government now contends. The self-same authorities which appear to concede that power also admit that it can be waived or relinquished. What then was the attitude of the Dominion towards those States which it sought to draw into the Republic of India which was yet to be free, sovereign, democratic, as its Constitution later proclaimed it to be? We quote from the mouthpiece of that Government as disclosed in the White Paper on Indian States published by official authority.

Sardar Vallabhbhai Patel's statement (he was then in charge of the States Department) 5th July, 1947, is reproduced at page 157. He said at page 158:- "This country with its institutions is the proud heritage of the people who inhabit it, It is an accident that some live in the States and some in British India but all alike partake of its culture and character. We are all knit together by bonds of blood and feeling. no less than of self-interest' None can segregate us into segments; no impassable barriers can be set up between us. I suggest that it is therefore better for us to make laws sitting together as friends than to make treaties as aliens. I invite my friends,the Rulers of States and their people to the Councils of Constituent Assembly in this spirit of friendliness and co-operation in a joint endeavour, inspired by common allegiance to our motherland for the common good of us all."

This invitation was accepted on 19th May, 1949. Page 109 of the White Paper says

> "As the States came closer to the Centre it became clear that the idea of separate Constitutions being framed for different constituent units of the Indian Union was a legacy from the Rulers' polity which could have no place in a democratic set-up. The matter was, therefore, further discussed by the Ministry of States with the Premiers of Unions and States on May 19, 1949, and it was decided, with their concurrence, that the Constitution of the States should also be framed by the Constituent Assembly of India and should form part of the Constitution of India."

It is impossible to think of those who -sat down together -in the Constituent Assembly, and of those who sent representatives there, as conqueror and conquered, as those who ceded and as those who absorbed, as sovereigns or their plenipotentiaries, contracting alliances and entering into treaties as high contracting parties to an act of State. They were not there as sovereign and subject as citizen and alien, but as the sovereign peoples of India, free democratic equals, forging the pattern of a new life for the common weal.

Every vestige of sovereignty was abandoned by the Dominion of India and by the States and surrendered to the peoples of the land who through their representatives in the Constituent Assembly hammered out for themselves a new

Constitution in which all were citizens in a new order having but one ie, and owing but one allegiance: devotion, loyalty, idelity, to the Sovereign Democratic Republic that is India. At one stroke all other territorial allegiances were wiped out and the past was obliterated except where expressly preserved; at one moment of time the new order was born with its new allegiance springing from the same source for all, grounded on the same basis: the sovereign will of the, peoples of India with no class, no caste, no race, no creed, no distinction, no reservation."

(ii) State of Bihar vs. Rani Sonabati Kumari, reported in AIR 1961 SC 221:

"It was urged that the Subordinate Judge by his order directed the State " not to issue any notification for taking possession "-and as the notification under s. 3(1) does not proprio vigore affect or interfere with the possession of the proprietor or tenure-holder, the issue of such a notification was not within the prohibition. The same argument was addressed to the High Court and was repelled by the learned Judges and in our opinion correctly. In the first place, the only "notification" contemplated by the provisions of the Act immediately relevant to the suit, was a notification under s. 3(1). Such a notification has the statutory effect of divesting the owner of the notified estate of his or her title to the property and of trans- ferring it to and vesting it in the State. The State is enabled to take possession of the estate and the properties comprised in it by acting under s. 4, but the latter provision does not contemplate any notification, only executive acts by authorized officers of the State. Of course, if action had been taken under s. 4, and the possession of the respondent had been interfered with, there would have been a further breach of the order which directed the State. not to interfere with or disturb in any manner, the plaintiff's possession. What we desire to point out is that the order of the Court really consisted of two parts- the earlier directed against the defendant publishing a notification which in the context of the relevant statutory provisions could only mean a notification under s. 3(1) and that which followed, against interfering with the plaintiff's possession and the fact that-the second part of the order was not contravened is no ground for holding that there had been no breach of the first part. In the next place, the matter is put beyond the pale of controversy, if the order were read, as it has to be read, in conjunction with the plaint and the

application for a temporary injunction. Mr. Sinha did not seriously contend that if the order of the Court were understood in the light of the allegations and prayers in these two documents, the reference to the " notification " in it was only to one under s. 3(1) of the Act, and that the injunction therefore was meant to cover and covered such a notification. We, therefore, hold that this objection must fail. ”

(iii) The Special Land Acquisition Officer, Hosanagar vs. K.S. Ramachandra Rao and others, reported in AIR 1972 SC 2224:

“2. Mr.M.Veerappa, the learned counsel for the State of Mysore, contends that the Land Acquisition Officer had not assessed the compensation payable for the rights of the respondents in the lands acquired. According to him, the Land Acquisition Officer merely estimated the value of the lands acquired. He contends that the respondents are not entitled to the entire value of the lands acquired, but that they are entitled only to the value of their rights into those lands as held by this Court in Seshagiri Rao's case (1964) 2 Mys LJ 287 (supra). We have gone through the Award made by the Land Acquisition Officer. The Land Acquisition Officer appears to have valued the rights of the respondents in the lands acquired. Whether the valuation made by him is correct or not cannot be gone into these proceedings. The appellants is bound by the valuation made by the Land Acquisition Officer. The view taken by the Land Acquisition Officer that the respondents are not entitled to any compensation in respect of the lands acquired cannot be sustained in view of this Court's decision in Seshagiri Rao's case (supra). ”

(iv) The State of U.P. And Zahoor Ahmad and another, reported in (1973) 2 SCC 547:

“16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding

any provisions of any statutory or common law."

(v) Municipal Corporation of Delhi vs. Gurnam Kaur, reported in AIR 1989 SC 38:

> "13. At the end of the day, we must make a mention that Shri Verghese, learned counsel for the respondent made a valiant effort to bring into play the principles laid down by this Court in Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors., [1985] 3 SCC 545 and Bombay Hawkers' Union & Ors. v. Bombay Municipal Corporation & Ors., [1985] 3 SCC 528. We are afraid, we cannot permit the question to be raised for two reasons. In the first place, no such point was taken in the writ petition nor any contention advanced before the High Court that the removal of the illegal encroachment by the Municipal Corporation constitutes a threat to life and liberty guaranteed under Art. 21 of the Constitution or that the right to life includes a right to livelihood. Secondly, the rights of the parties now stand crystallized by the aforementioned judgment of the learned Subordinate Judge in the suit brought by the respondent, and the rights have to be worked out in terms of the decree passed by him which has since become final. Besides, the decision in Olga Tellis is of little avail. Chandrachud, CJ. speaking for the Constitution Bench observed that the word 'life' in Art. 21 included livelihood, but upheld the validity of ss. 313(1) and 314 of the Bombay Municipal Corporation Act, 1888 which provided that the Commissioner may 'without notice, cause to be removed' obstructions as an encroachment on footpaths could not be regarded as unreasonable, unfair or unjust. The learned Chief Justice however said that the section conferred a discretionary power which like all power must be exercised reasonably and in conformity with the provisions of our Constitution. In Bombay Hawkers' Union, Chandrachud, CJ. speaking for himself and one of us (Sen, J.) held that the impugned provision was in the nature of a reasonable restriction in the interests of the general public, on the exercise of the right of hawkers to carry on their trade or business. ..."

(vi) State of U.P. and another vs. Synthetics and Chemicals Ltd. and another, reported in (1991) 4 SCC 139 :

> "41.... In Lancaster Motor Company (London) Ltd. v. Bremith Ltd., [1941] IKB 675 the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gumam Kaur, [1989] 1 SCC 101. The Bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perperated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contem- plated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judg- ment without any occasion is not ratio decedendi. In Shama Rao v. State of Pondicherry, AIR 1967 SC 1680 it was ob- served, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stabil- ity and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

(vii) R.Abdul Jabbar and 5 others vs. The State of Tamil Nadu and 4 others, reported in 1996 (II) CTC 719 :

> "15. It is plain that the Government need not acquire its own lands, and the Government was not competent in the proceedings under the Land acquired, denying compensation to the persons entitled, having issued notifications specifying the lands and the names of owners/occupiers/persons interested. Thus, under the circumstances, I have not hesitation to hold that whenever the Government waives to avail or invoke the condition of the grant or assignment, that a grantee or asignee will surrender lands whenever required by the Government without claiming compensation, and initiates proceedings for compulsory acquisition of such lands under the provisions of the Land Acquisition Act, treating such lands as not belonging to itself, but to others, is under an obligation to pay compensation as provided in the Act. Viewed in any

way, the petitioners are entitled to succeed."

(viii) Amit Das vs. State of Bihar, reported in AIR 2000 SC 2264 (1) :

> "13. Under Section 18, when any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, or in any other law for the time being in force, be released on bail with or without surety unless there appears reasonable grounds for believing that the release is likely to bring him in association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice. In the latter case, the person has to be kept in an observation home or a place of safety until he can be brought before a Juvenile Court. The Juvenile Court if not releasing the person on bail must not commit him to prison but send him to an observation home or a place of safety during the pendency of the enquiry before him. Under Section 20, where a juvenile charged with an offence appears or is produced before a Juvenile Court, the Juvenile Court shall hold an enquiry in accordance with the provisions of Section 39. A reading of all these provisions referred to herein above makes it very clear that an enquiry as to the age of the juvenile has to be made only when he is brought or appears before the competent authority. A Police Officer or a Magistrate who is not empowered to act or cannot act as a competent authority has to merely form an opinion guided by the apparent age of the person and in the event of forming an opinion that he is a juvenile, he has to forward him to the competent authority at the earliest subject to arrangements for keeping in custody and safety of the person having been made for the duration of time elapsing in between. The competent authority shall proceed to hold enquiry as to the age of that person for determining the same by reference to the date of the appearance of the person before it or by reference to the date when person was brought before it under any of the provisions of the Act. It is irrelevant what was the age of the person on the date of commission of the offence. Any other interpretation would not fit in the scheme and phraseology employed by the Parliament in drafting the Act."

(ix) M/s.A-One Granites vs. State of U.P. and others, reported in AIR

2001 SC 1203:

> "10. The first question which falls for consideration of this Court is as to whether the question regarding applicability of rule 72 of the Rules in relation to the present lease is concluded by the earlier decision of this Court rendered in Prem Nath Sharma vs. State of U.P. & Anr., (1997) 4 SCC
>
> 552. From a bare perusal of the said judgment of this Court it would be clear that the question as to whether rule 72 was applicable or not was never canvassed before this Court and the only question which was considered was whether there was violation of the said rule.
>
> 11. This question was considered by the Court of Appeal in Lancaster Motor Co. (London) Ltd. vs. Bremith Ltd., (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corporation of Delhi vs. Gurnam Kaur, 1989 (1) SCC 101 observed thus:-
>
> In Gerard v. Worth of Paris Ltd.(k), (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimants debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., (1941) 1 KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided without argument, without reference to the crucial words of the rule, and without any citation of authority, it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.

In State of U.P. & Anr. vs. Synthetics and Chemicals Ltd. &

Anr., (1991) 4 SCC 139, reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus:

A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

In the case of Arnit Das vs. State of Bihar, 2000 (5) SCC 488, while examining the binding effect of such a decision, this Court observed thus:-

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

12. Thus we have no difficulty in holding that as the question regarding applicability of rule 72 of the Rules having not been even referred to, much less considered by this Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra and accordingly this Court is called upon to decide the same."

(x) Achaldas Durgaji Oswal (dead) through L.Rs. vs. Ramvilas Gangabisan Hoda (dead) through L.Rs. And others, reported in (2003) 2 MLJ 1 (SC):

"Order XXXIV Rules 7 and 8 do not confer any right upon the usufructuary mortgagee to apply for final decree which is conferred on mortgagee on other types of mortgages. By reason of sub-rule (1) of Rule 8 of Order XXXIV, a mortgagor is entitled to make an application for final decree at any time before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or

before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule. No such application is again contemplated at the instance of the usufructuary mortgagee. By reason of sub-rule (1) of Rule 8 of Order XXXIV, a right of redemption is conferred upon the mortgagor of a usufructuary mortgage. Such a provision has been made evidently having regard to the right of redemption of a mortgagor in terms of Section 60 of the Transfer of Property Act and further having regard to the fact that a usufructuary mortgagee would be entitled to possess the property in question till a final decree of redemption is passed.

25. A bare perusal of the provisions of Order XXXIV Rule 7 & 8 would show that despite failure to pay the amount found or declared due by the preliminary decree on or before the date fixed by the Court, the mortgagee-defendant shall be entitled to apply for a final decree under clause c(ii) of rule 7 of Order XXXIV. In a case of a mortgage by conditional sale or anomalous mortgage, the mortgagee can pray for passing of a final decree debaring the mortgagor from claiming his right to redeem the properly. In a case of a usufructuary mortgage, however, the mortgagee is not entitled to apply for a final decree. The right of mortgagee to apply for a final decree is provided in sub-clause (3) of rule 8 of Order XXXIV. His application for a final decree must be confined to for declaration that the plaintiff and all persons claiming under him are debarred from all right to redeem the property in the case of a mortgage by a conditional sale or of an anomalous mortgage the terms whereof provide for foreclosure only and not for sale. In the case of the mortgage other than usufructuary mortgage, the mortgagee can file an application to pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds thereof be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same. Sub-rule (1) of Rule 8 shows that only a mortgagor can apply to the Court to pass a final decree on payment of the amount found or declared due under the preliminary decree on making this deposit and upon filing the application as provided for in sub-rule (1) of Rule 8 the mortgagor can request the Court to order the mortgagee to put him in possession of the properties which were the subject matter of the mortgage. The amount determined by the Court which the mortgagor is liable to pay to the mortgagee can be deposited before the right of redeem is lost. It may be noticed

that even sub-rule (2) of Rule 7 of Order XXXIV does not apply to the usufructuary mortgage. It may be noticed that by reason of the amendment introduced in 1929 the right conferred earlier on a usufructuary mortgage to bring the property to sale in case of the mortgagor not making the payment within the time fixed in the decree was taken away; As sub-rule (2) of Rule 7 is applicable only in a case of mortgages other than the usufructuary mortgages, a usufructuary mortgagor is not entitled to seek extension of time and in that view of the matter the fact that such an application made by the First Respondent herein was rejected becomes irrelevant.

43. In the said case, the contentions raised herein had not been raised obviously because no such question arose for consideration and any passing observation made therein without any argument and without any precedent cannot be treated to be a declaration of law in terms of Article 141 of the Constitution of India.

44. Any observation made therein contrary to what we have held above cannot be said to be good law and is hereby overruled."

(xi) Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad and others, reported in 2004 (3) CTC 19 :

"100. The deprivation of the assignee's right to payment of just compensation equivalent to the market value of the assigned land may amount to deprivation of right to livelihood. The denial of constitutional claim to receive just compensation after depriving the assignee of his land is impermissible except pursuant to a constitutionally valid rule or law.

104. Therefore, notwithstanding the fact that the recipients had accepted the assignment subject to 'no compensation clause' and that they will not object to the resumption of the assigned lands for a "public purpose, they are entitled to assert that any such action on the part of the authorities will be in violation of their guaranteed fundamental rights. How far the argument regarding the existence and scope of the right claimed by the recipients is well-founded is another matter. But, the argument has to be examined despite the concession.

105. In the matter of distribution of material resources of the community to the vulnerable sections of the society by the State in furtherance of its constitutional obligations no argument can be heard from the State contending that the recipient of the benefit may either accept with the restrictions or not to accept the benefit at all. The whole idea of distributive justice is to empower the weaker sections of the society and to provide them their share of cake in the material resources of the community of which they were deprived from times immemorial for no fault of theirs. Having resolved to extend the benefits as a welfare measure, no unconstitutional condition can be imposed depriving the recipients of the benefits of their legitimate right to get compensation in case of taking over of the benefit even for a valid public purpose. The recipients cannot be at the mercy of the State forever.

108. Be it noted, the land by way of assignment is let for purposes of agriculture or for purposes ancillary thereto, for personal occupation and cultivation by the agricultural labourers and others belonging to weaker sections of the society. It may be lawful for the State to acquire any portion of such land as is within the ceiling limit but not without providing for compensation at a rate which shall not be less than the market value thereof. The acquisition of such land even for a public purpose without payment of compensation shall be in the teeth of Article 31-A of the Constitution of India.

110. In the result, we hold that 'no compensation' clause, restricting the right of the assignees to claim full compensation in respect of the land resumed equivalent to the market value of the land, is unconstitutional. The 'no compensation clause' infringes the fundamental rights guaranteed by Articles 14 and 31-A of the Constitution. We are conscious that Article 21 essentially deals with personal liberty. But in cases where deprivation of property would lead to deprivation of life or liberty or livelihood, Article 21 springs into action and any such deprivation without just payment of compensation amounts to infringement of the right guaranteed thereunder. The doctrine of 'unconstitutional conditions' applies in all its force.

111. In the circumstances, we hold that the assignees of

the Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. We further hold that even in cases where the State does not invoke the covenant of the grant or patta to resume the land for such public purpose and resorts to acquisition of the land under the provisions of the Land Acquisition Act, 1894, the assignees shall be entitled to compensation as owners of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894. No condition incorporated in patta/deed of assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land.

112. In such view of ours, the view taken by this Court in Bondapalli Sanyasi (supra) that whenever the land is taken possession of by the State invoking the terms of the grant, the right of an assignee to any compensation may have to be determined in accordance with the conditions in patta itself is unsustainable. With due respect, we are unable to agree with the view taken in this regard. We are also unable to agree with the view taken that the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as owner but as an interested person for the interest he held in the property."

(xii) Chairman, Indore Vikas Pradhikaran vs. M/s. Pure Industrial Cock & Chemicals Ltd. & Others, reported in AIR 2007 SC 2458 :

"114. The question again came up for consideration in Howrah Municipal Corpn. v. Ganges Rope Co. Ltd. [(2004) 1 SCC 663], wherein this Court categorically held :

"The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to ownership or possession of any property for which the expression vest is generally used. What we can understand from the claim of a vested right set up by the respondent

> Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a legitimate or settled expectation to obtain the sanction. In our considered opinion, such settled expectation, if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T. Road and other wards, such settled expectation has been rendered impossible of fulfilment due to change in law. The claim based on the alleged vested right or settled expectation cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such vested right or settled expectation is being sought to be enforced. The vested right or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a settled expectation or the so-called vested right cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon."

(xiii) Pradeep Oil Corporation vs. Municipal Corporation of Delhi and another, reported in (2011) 5 SCC 270:

> "41. It is well settled legal position that a license can be revoked at any time at the pleasure of the licensor. Even otherwise, unless the parties to the agreement had an intention to enter into a deed of lease the Administration would not have agreed to demise the premises on payment of rent in lieu of grant of exclusive possession of the demised land and further stipulated service of three months' notice calling upon either party to terminate the agreement. In view of the same, the argument advanced by the learned counsel of the appellant that a stipulation having been made in the agreement itself that by reasons thereof the grantee shall not be a tenant and thus the deed must be construed to be a license cannot be accepted. In

> our considered view, such a clause may at best be one of the factors for construction of the document in question but the same by itself certainly be a decisive factor."

(xiv) Azim Ahmad Kazmi and others vs. State of Uttar Pradesh and another, reported in (2012) 7 SCC 278 :

> "30. In State of U.P. vs. Zahoor Ahmad, this Court held that Section 3 of the Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. From Clause 3(C) of the deed, it is clear that the State of U.P. While granting lease made it clear that if the demised premises are at any time required by the lessor for his or for any public purpose, he shall have the right to give one month's clear notice to the lessee to remove any building standing at the time on the demised property and within two months of the receipt of the notice to take possession thereof on the expiry of that period subject to the condition that if the lessor is willing to purchase the property on the demises premises, the lessees shall be paid for such building such amount as may be determined by the Secretary to the Government of U.P. In the Nagar Awas Department."

12. Mr.R.Natarajan, learned counsel appearing for the appellant in W.A.No.2510 of 2013, would submit that the appellant is one of the descendants in the family of Rajah Sir Ramasamy Mudaliar and was appointed as a co-Trustee by this Hon'ble Court vide order dated 05.06.2000 in O.S.A.Nos.66 and 67 of 2000. The Government, vide G.O.Ms.No.534 dated 06.08.1888, had allotted a piece of land measuring an extent of 1.33 acres, comprised in T.S.No.41, Vepery Village, Fort-Tondiarpet Taluk valued at Rs.3,638/- at free of cost solely for the purpose of construction of choultry, failing which, the said grant of land would be liable for resumption. The choultry building so constructed has been classified as a historical and heritage

building by the High Power Heritage Committee under orders of this Court and subsequently, a direction was issued by this Court to the Heritage Conservation Committee to issue notice to all occupants of the building so as to preserve and maintain such buildings without causing any damage to them, thereby also cautioning the appellant to ensure safety of the heritage building. He would further submit that the protection of ancient monuments has to be necessarily kept in mind while carrying out developmental activities. The need for ensuring protection and preservation of ancient monuments for the benefit of future generations has to be balanced with benefits which may accrue from mining and other development-related activities. The appellant has also submitted a claim to the Government for maintenance and preservation of temples and the statue of Rajah Sir Ramasamy Mudaliar, but there was no direct consideration of the claim of the appellant, instead, it was simply stated that CMRL has committed to preserve the heritage building as per the meeting of Heritage Committee held on 17.02.2012. It is indeed regrettable to note that the Heritage Committee has only directed CMRL to ensure as to the non-hindrance of the view of Central Railway Station, which falls in the proximity of the proposed station area. The learned counsel would also argue that on an earlier occasion, CMRL filed an affidavit before the Hon'ble Supreme Court in O.S.A.Nos.100 and 101 of 2011, stating its inability to plan setting up of underground metro station in lands, where Hotel Picnic was situated thereon. Therefore, it is crystal clear that there was no discussion regarding resumption

of Rajah Sir Ramasamy Mudaliar Choultry located in T.S.No.41. Moreover, the founder Trustee had invested a sum of Rs.30,000/- in the year 1888 itself towards construction of choultry in the grant land, which is under the management and control of this Court as per the Official Trustee Act, 1913. According to Section 10 (2) of the said Act, the Official Trustee has to take periodical directions and orders from this Court as required under Section 25 thereof.

13. Further, according to the learned counsel, even in matters of transfer of Trust property, as per the mandate of Section 29 of the Official Trustee Act, this Court alone is vested with the authority of ordering transfer of the Trust property. All these provisions of law have been completely breached and smashed by the Government under the arbitrary assumption to the effect that, it has its own authority and power to resume the Trust property of Rajah Sir Ramasamy Mudaliar without reference to this Court. Hence, the only course available to the State is to either move this Court under Section 25 of the Official Trustees Act or under the provisions of the Land Acquisition Act, that the Government has no power to intrude or invade the right of the founder Trustee and that the encumbrance existing in T.S.No.41 cannot be ignored by the State. Thus, it is prayed by the learned counsel for the appellant that the impugned order passed in W.P.No.28461 of 2013 is liable to be set aside in view of the reason that encumbrance exists in the subject property, which debars the 1st respondent from adopting the measure of resumption and the legal

encumbrance confers possessory rights and title upon Rajah Sir Ramasamy Mudaliar Choultry, which has to be addressed and redressed in the manner specified under the scheme of Land Acquisition Act.

14. In support of his case, Mr.R.Natarajan, learned counsel, has relied on the following decisions:

(i) Bachan Singh vs. State of Punjab etc Batch, reported in (1982) 3 SCC 24 :

> "18. It will thus be seen that the rule of law has much greater vitality under our Constitution than it has in other countries like the United Kingdom which has no constitutionally enacted fundamental rights. The rule of law has really three basic and fundamental assumptions; one is that law law-making must be essentially in the hands of a democratically elected legislature, subject of course to any power in the executive in an emergent situation to promulgate ordinances effective for a short duration while the legislature is not in session as also to enact delegated legislation in accordance with the guidelines laid down by the legislature; the other is that, even in the hands of a democratically elected legislature, there should not be unfettered legislative power, for, as Jefferson said: "Let no man be trusted with power but tie him down from making mischief by the chains of the Constitution"; and lastly there must be an independent judiciary to protect the citizen against excesses of executive and legislative power. Fortunately, whatever uncharitable and irresponsible critics might say when they find a decision of the court going against the view held by them, we can confidently assert that we have in our country all these three elements essential to the rule of law. It is plain and indisputable that under our Constitution law cannot be arbitrary or irrational and if it is, it would be clearly invalid, whether under Article 14 or Article 19 or Article 21, whichever be applicable."

(ii) Amba Bai and Others vs. Gopal and other, reported in (2001) 5 SCC 570 :

> "11. If the Judgement or order of an inferior Court is subjected to an appeal or revision by the superior court and in such proceeedings the order or judgment is passed by the superior court determining the rights of parties, it would supersede the order or judgment passed by the inferior court. The juristic justification for such doctrine of merger is based on the common law principle that there cannot be, at one and the same time, more than one operative order governing the subject matter and the judgment of the inferior court is deemed to lose its identity and merges with the judgment of the superior court. In the course of time, this concept which was originally restricted to appellate decrees on the ground that an appeal is continuation of the suit, came to be gradually extended to other proceedings like Revisions and even the proceedings before quasi- judicial and executive authorities.

(iii) Saraswati Devi (Dead) By Lr. vs. Delhi Development Authority and others, reported in (2013) 3 SCC 571:

> "34. What is the effect of provisional possession which was given to the appellants husband in 1960 on approval of his highest bid? Does it amount to creation of an encumbrance in the property? If the provisional possession given to the appellant's husband amounted to creation of an encumbrance, whether the said property could have been acquired under the LA Act although the ownership vested in the central government? The fate of the appeal significantly will depend upon answer to these questions.

> 39. In M. Ratanchand Chordia & Ors. v. Kasim Khaleeli, a Division Bench of the Madras High Court had an occasion to consider the meaning of the word "encumbrances" with reference to the 1954 Act and the LA Act in the context of the easemantary right of way. The Division Bench considered the word "encumbrances" thus : (AIR p.215, para 18)

> > "18. The word "Encumbrances" in regard to a person or an estate denotes a burden which ordinarily consists of debts, obligations and responsibilities. In the sphere of law it connotes a

> liability attached to the property arising out of a claim or lien subsisting in favour of a person who is not the owner of the property. Thus a mortgage, a charge and vendor's lien are all instances of encumbrances. The essence of an encumbrance is that it must bear upon the property directly and in-directly and not remotely or circuitously. It is a right in realiena circumscribing and subtracting from the general proprietary right of another person. An encumbered right, that is a right subject to a limitation, is called servient while the encumbrance itself is designated as dominant"

41. It is well known in law that a person in possession of the property though not owner - is entitled to certain rights by virtue of his possession alone. We are in agreement with the view of the Punjab High Court in Roshan Lal Goswami that an auction-purchaser on provisional possession being given to him possesses possessory rights, though he does not have proprietary rights in the auctioned property. Thus, there remains no doubt that in October, 1960 or near about encumbrance in the subject property came to be created.

42. The next question is whether on creation of an encumbrance, the subject property could have been acquired under the LA Act although the ownership in the land vested in the central government. Ordinarily, when the government possesses an interest in land, which is the subject of acquisition under the LA Act, that interest is outside such acquisition because there can be no question of the government acquiring what is its own. This is what this Court said in Nusserwanji Rattanji Mistri13 but this rule is not without an exception. There is no impediment in acquisition of land owned by the central government by invoking the provisions of the LA Act where such land is encumbered or where in respect of the land owned by the government some private interest has been created. As a matter of fact, Sharda Devi11 does not hold to the contrary. It is so because what Sharda Devi holds is this : the acquisition of land wherein the ownership or the entirety of rights already vested in the State on which there are no private rights or encumbrance such land is beyond the

purview of the LA Act. In other words, if the government has complete ownership or the entirety of rights in the property with it, such land cannot be acquired by the government by invoking its power of acquisition under the LA Act but if some private rights have been created in such property or the property has encumbrance(s), the acquisition of such land is not beyond the pale of the LA Act.

43. Madan Lal Nangia has been relied upon by the Division Bench in the impugned order in upsetting the decision of the Single Judge. Mr. Ranjit Kumar, learned senior counsel for the appellant sought to distinguish this judgment. He submitted that Madan Lal Nangia was a case where this Court was concerned with the properties which vested in the custodian and having regard to this aspect, this Court said that merely because the properties vest in the custodian as an evacuee property it does not mean that the same cannot be acquired for some other purpose.

44. It is true that facts in Madan Lal Nangia were little different but, in our view, the legal position highlighted therein does not become inapplicable to the present case on that ground. In paragraphs 16, 17 and 18 of the Report (Pgs. 334-335), this Court observed as follows: (SCC pp.334-35)

> "16. A property is a composite property because a private party has an interest in that property. The scheme of separation, to be framed under Section 10 of the Evacuee Interest (Separation) Act, is for the purpose of separating the interest of the evacuee from that of the private party. Therefore, even if the evacuee's interest was acquired under Section 12, the interest of the private person could have been acquired under the Land Acquisition Act. Further, if the land stood acquired by the notification dated 7-7-1955 then the question would arise as to how the respondents acquired title to these lands. If they purchased after the date of notification dated 7-7-1955, they would get no title. They then would not be able to maintain the writ petition. Dr Dhavan submitted that the appellants had admitted the title of the respondents and thus this question would not arise. We are unable to

accept the submission. It is only a person who has an interest in the land who can challenge acquisition. When a challenge is made to an acquisition at a belated stage, then even if the court is inclined to allow such a belated challenge, it must first satisfy itself that the person challenging acquisition has title to the land. Very significantly, in their writ petition the respondents do not state when they acquired title.

17. Undoubtedly, the evacuee properties vested in the Custodian for the purposes of distribution as per the provisions of the various Acts. However, it is to be noted that under the various Acts in lieu of properties, compensation in terms of money can also be paid. Thus, merely because the properties vest in the Custodian as evacuee properties does not mean that the same cannot be acquired for some other public purpose....

18. It would be open to the Government to acquire evacuee property and give to the Custodian compensation for such acquisition. Section 4 notification dated 23-1-1965 not having excluded evacuee properties the respondents can get no benefit from the fact that in the 1959 notification evacuee properties had been excluded."

45.1.(i) At the time of acquisition of evacuee property under Section 12 of the 1954 Act if such property has interest of a private person, the interest of private person can be acquired under the LA Act even though the land is owned by the government.

46. What follows from proposition (i) is also this that after the acquisition of evacuee property under Section 12, if any encumbrance is created or interest of a private person intervenes therein, such land even if owned by the government can be acquired under the LA Act. This is in congruity and consonance with Sharda Devi as well."

(iv) K.Guruprasad Rao vs. State of Karnataka and others, reported in (2013) 8 SCC 418 :

"94. In our view, the detailed reasons recorded by the

Committee, which have been extracted hereinabove, for not accepting the recommendations of the expert bodies about the distance up to which mining should not be allowed are correct and those recommendations cannot be relied upon for accepting the argument of the learned counsel for the State and the private respondents that the recommendations made by the Committee should be rejected. We may hasten to add that the Committee's recommendations are not in conflict with the provisions of the 1957 Act and the Rules framed thereunder. The 1959 Rules and the Karnataka Rules provide for grant of permission/licence for mining in the prohibited/regulated/protected area but the documents produced before this Court do not show that the competent authority had granted permission/licence to any of the private respondents for undertaking mining operations which have the effect of damaging the temple in question. That apart, the distance criteria prescribed in the 1958 Act, the Karnataka Act and the Rules framed thereunder has little or no bearing on deciding the question of restricting the mining operations near the protected monument which has already suffered extensive damage due to such operations.

98. When seen in this light, the protection of ancient monuments has necessarily to be kept in mind while carrying out development activities. The need for ensuring protection and preservation of the ancient monuments for the benefit of future generations has to be balanced with the benefits which may accrue from mining and other development related activities. In our view, the recommendations and suggestions made by the Committee for creation of Core Zone and Buffer Zone appropriately create this balance. While mining activity is sure to create financial wealth for the leaseholders and also the State, the immense cultural and historic wealth, not to mention the wealth of information which the temple provides cannot be ignored and every effort has to be made to protect the temple.

99. Before concluding, we may deal with the submission of Shri Lalit that mining can be permitted beyond the distance of 300 meters from the temple by using Ripper Dozer and Rock Breaker machines. According to the learned senior counsel, the use of Ripper Dozer and Rock

Breaker will not produce vibration which may cause harm to the temple. In our view, this submission does not merit acceptance because in paragraph 6 of the suggestions made by it, the Committee appointed by the Court has already indicated that mining in the Buffer Zone may be permitted with controlled blasting or without blasting by using Ripper Dozer/Rock Breaker or any other machinery and taking adequate measures towards generation, propagation, suppression and deposition of airborne dust to be closely monitored by experts from IBM etc.

100. In the result, the appeal is allowed and the impugned order is set aside. The report of the Committee is accepted and the State Government is directed to implement the recommendations contained in Part V thereof including the recommendation relating to creation of Corpus Fund of Rs.3,43,19,160 which shall be utilized for implementing the conservation plan for Jambunatheswara temple. However, it is made clear that respondent No.18 shall be free to operate the Beneficiation plant subject to the condition that it shall procure raw material only through E-auction mode.

101. With a view to ensure that other protected monuments in the State do not suffer the fate of Jambunatheswara temple, we direct that the Committee appointed by this Court vide order dated 26.4.2011 shall undertake similar exercise in respect of other protected monuments in the State in whose vicinity mining operations are being undertaken and submit report to the State Government within a maximum period of nine months. The State Government shall release a sum of Rs.30 lacs in favour of the Committee to meet the expenses of survey, investigation etc. The report submitted by the Committee shall be considered by the Government within next two months and appropriate order be passed.

102. We hope and trust that the Government of India will also appoint an expert committee/group to examine the impact of mining on the monuments declared as protected monuments under the 1958 Act and take necessary remedial measures."

15. Mr.Anirudh Krishnan, learned counsel appearing for the appellants in

W.A.Nos.2513 to 2517 of 2013, would vehemently contend that resumption will be subject to the terms of the lease and the first respondent has to initiate appropriate legal proceedings to evict the lessees and any other method to evict the lessees would amount to extra-judicial dispossession, which is impermissible in law. The doctrine of *sub-silentio* has been practised in the present case, meaning thereby resumption was implied without expression or notice and directions issued by the Hon'ble Apex Court to the effect that objections of the appellants and the other lessees must be taken into account before passing an order, were not followed. Above all, it is evident from the map produced by CMRL that the area earmarked for CMRL project does not include appellants' lease-hold area and the lands required for the said project are situated on the northern side of Poonamallee High Road. Based on the source of information elicited under RTI Act, it is obvious that the appellants' lease-hold areas fall outside the lands earmarked for the purpose of Metro Rail Project. The appellants, as per the impugned orders, are to vacate their premises without claiming compensation for the amount spent on it, which is wholly arbitrary, illegal and violative of Articles 14 and 300(A) of the Constitution of India. He would submit that Section 25 of the Official Trustees Act clearly stipulates that any involvement of the Trust property should be dealt with only by the Hon'ble High Court and the Government has no business to interfere with the administration of the Trust. The learned counsel, by *inter alia* stating that the learned Single Judge, while allowing resumption of appellants' lands

without even determining the compensation amount has taken away the rights of appellants, would submit that pronouncements of law, which are not part of the *ratio decidendi* and are not authoritative and the same was delivered without reference to the relevant provisions of the Act and a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated under Article 141. He would finally contend that issuance of impugned orders completely ignoring the fact that appellants are in possession of the schedule property under a valid and subsisting lease is against the terms of the lease and without recourse to law and, thus, dismissal of writ petitions has resulted in a jeopardy to the right of appellants to livelihood, which needs interference by this Court in entirety. The learned counsel has cited following judgments:

(i) Lancaster Motor Company Limited vs. Bremith Limited, reported in 1941 1 K.B. 675 :

> "I should have thought, as I have said, that the appeal could not succeed, but Mr.Mitchell refers us to the decision of this Court in Gerard vs. Worth of Paris Ltd. There a Company went into voluntary liquidation, the liquidator discharged the manageress, and she sued the company for wrongful dismissal and obtained judgment in default of defence. She then applied for a garnishee order on a bank account in the name of the liquidator. There was no evidence of anyother claims on the company. The Master refused to make the order absolute, but the judge in chambers reversed his decision. There were several points argued in the case, but the point on which the parties appeared to be anxious to have a decision was the question to the priority of the claimant's debt. So far as the report shows, no argument was addressed to the Court on the question whether or not, in view

of the fact that the account was in the name of the liquidator, a garnishee order could properly be made. I cannot help thinking, on reading the report, that that point was deliberately passed sub silentio by counsel in order that the point of substance might be decided.

Neverthless, it is fair to say that the point had to be decided by the Court before it could make the order which it did, because it had to decide whether the order of the judge should stand or the order of the Master should be restored. There were two members of the Court sitting, Slesser L.J. And Romer L.J., and the only material passage in the judgment (which was the judgment of Slesser L.J., Romer L.J. Not delivering an independent judgment) is to the following effect: The Master appears to have taken the view that, in so far as the debt was owing to the company and the account was in the name of the liquidator, there was a difficulty in proceeding by garnishee order. In my view the learned Master, if that was his view, was mistaken. If all other requirements were satisfied and the lady was entitled to garnishee that account of the company, the mere fact that it stood in the name of the liquidator does not seem to me to effect any difference in her rights." With all respect to the learned Lord Judge who delivered that judgment, and to Romer L.J., who agreed with it, I cannot consider that this Court is bound to follow it. It was delivered without argument, without reference to the cruicial words of the rule, and without any citation of authority. Accordingly, I do not propose to follow these observations, because it seems to me that they are wrong in principle and are not to be justified when the language of the rule and the ordinary principles which govern the relationship of banker and customer are considered.

It is worth noticing that in the later case of Hirschorn v. Evans Slesser L.J. Delivered a judgment, as one of a majority consisting of himself and Mackinnon L.J., the reasoning of which appears to me to be quite inconsistent with the previous decision to which he had been a party in Gerard vs. Worth of Paris Ld. In Hirschorn v. Evans, a husband and a wife had a bank account in their joint names and it was held by Slesser L.J. And Mackinnon L.J., Greer L.J. Dissenting that "inasmuch as the debt which the bank owed was not a debt due to the husband alone but to him jointly with his wife, it

could not be attached to answer the judgment against these matters. The crucial matter to be observed is what is the relationship of the alleged debtor. That relationship must be one of debtor and creditor and unless it falls within that description the rule does not apply. That aspect of the matter was fully gone into by Slesser L.J., and Mackinnnon L.J. Did not dissent from that view. In fact, he took the same view himself.

In those circumstances, I feel that I am justified in the course which I propose to take and that is of saying that, in my opinion, this appeal must be dismissed.

(ii) Anamallai Club vs. Government of Tamil Nadu and others, reported in AIR 1997 SCC 3650 :

"5. The question is; whether the resumption of possession unilaterally, after determination of the grant in the manner provided under the grant itself, is valid in law as was held by the High Court? We think that the view taken by the High Court is not correct in law. In Bishan Das & Ors. vs. State of Punjab & Ors.[(1962 2 SCR 69], a Constitution Bench of this Court had considered the question whether the Government would unilaterally take possession of the land after termination of the lease. One Ramjidas had built a dharamasala, a temple and shops appurtenant thereto, after having a licence of land from the State Government. The lease was terminated and thereafter when the persons in possession were sought to be dispossessed, without taking any recourse to law, they filed writ petition under Article 226 but remained unsuccessful. When writ petition under Article 32 was filed, this Court had considered the question whether the Government is entitled to resume the land with a minimum use of force for ejectment without recourse to law. It was contended therein that there was no dispute as the question of the fact between the parties that the petitioners therein had no right and title to the subject matter in dispute. The writ petition under Article 226 was dismissed on the ground of the disputed question of fact which was upheld in appeal by the Division Bench. A writ petition under Article 32 was filed. The right to possession of land was a fundamental right at that

time. It was contended that the Government terminated the lease, as thereafter they were trespassers and so they had no right to resist the Government's power to resume the land. This Court had repelled both the contentions as unsound and has held that the Government violated the fundamental right to possession of lead since the petitioners therein were not trespassers. They remained in possession for long time. Pursuant to the lease, they had constructed dharamasala, temple and shops and managed them during the life time of the licencee. After his death, the petitioner and members of the family continued in possession of and in management of the properties which was an admitted possession. Therefore, they were not mere trespassers in respect of the said properties. It was held that on the admitted facts of the case, the petitioners therein could not said to be said in the trespassers in respect of the dharamasala, temple and shops not could the State could be said to be the owner of the property, irrespective of whether it was a trust, public or private having taking the possession unilaterally. It was open to the State to take appropriate legal action for the purpose. It was also held that the State could not remove them from possession except under the authority of law. The same view was reiterated by this Court in State of U.P. & Ors. vs. Maharaja Dharmander Pd. Singh & Ors.[(1989) 2 SCC 505 at 516) thus:

"A lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression `re-entry' in the lease deed does not authorise extra-judicial possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law. In the present case, the fact that the lessor is the State does not place it in any higher or better position. On the contrary, it is under an additional inhibition stemming from the requirement that all actions of Government and Governmental authorities should have a `legal' pedigree'. In Bishan Das vs. State of Punjab [(1962) 2 SCR 69] this Court said:

"We must, therefore, repel the argument based on the contention that the petitioners were trespassers and could be removed by an executive order. The argument is not only specious but highly dangerous by reason of its implications

and impact on law and order..."

Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle.

Therefore, there is no question in the present case of the Government thinking of appropriating to itself an extra-judicial right of re-entry. Possession can be resumed by Government only in a manner known to or recognised by law. It cannot resume possession otherwise than in accordance with law. Government is, accordingly, prohibited from taking possession otherwise than in due course of law."

6. In Lallu Yeshwant Singh vs. Rao Jagdish Singh & Ors. [(1968) 2 SCR 203], a Bench of this Court had considered the same question after reviewing the case law in that behalf and held that the Government cannot take possession of the land except in accordance with the procedure prescribed under the Act. In that case, the recourse to the provisions under Section 9 of the Specific Relief Act (Section 6 of the present Specific Relief Act, 1963) was upheld. The question was also considered by this Court by one of us (K. Ramaswamy, J.) in East India Hotels Ltd. vs. Syndicate Bank [1992 Supp. (2) 29 at 44]. It was held in paragraph 29, 30 and 32 that:

"They must obtain such possession as they are entitled to by proper course. In our jurisprudence governed by rule of law even an unauthorised occupant can beejected only in the manner provided by law. The remedy under Section 6 is summary and its object is to prevent self help and to discourage people in adopt any means fair or foul to dispossess a person unless dispossession was in due course of law or with consent.

What is meant by due course of law? Due course of law in each particular case means such an exercise of the powers by duly constituted tribunal or court in accordance with the procedure established by law under such safeguards of the protection of individual rights. A course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a tribunal competent by its constitution, that is by law of its creation, to pass upon the

subject matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the State, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise and to have the right determination of the controversy byproof, every material fat which bears on the question of fact or liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense.

It is thus clear that the course have viewed with askance any process other than strict compliance of law as valid in dispossessing a person in occupation of immovable property against his consent. The reason is obvious that it aims to preserve the efficacy of law and peace and order in the society relegating the jurisprudential perspectives to a suit under Section 6 of the Act and restitute possession to the person dispossessed, irrespective of the fact wether the has any title to possession or not."

(iii) The Collector of Bombay vs. Nusserwanji Rattanji Mistri and others, reported in (1955) 1 SCR 1311 :

"20. Then there remains the question whether the sale deed, Exhibit A, imposes any limitation on the right of the Crown to assess the lands. The deed conveys the lands to the purchasers absolutely "with all rights, easements and appurtenances whatsoever" to be held "for ever". It does not, however, recite that they are to be held revenue-free. But it is argued for the respondents that where there is an absolute sale by the Crown as here, that necessarily imports that the land is conveyed revenue-free; and section 3 of the Crown Grants Act No. XV of 1895 and certain observations in Dadoba v. Collector of Bombay(1) were relied on as supporting this contention. Section 3 of Act No. XV of 1895 is as follows:

"All provisions restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor any rule of

law, statute or enactment of the Legislature to the contrary notwithstanding".

21. The contention is that as the grant is of a freehold estate without any reservation it must, to take effect according to its tenor, be construed as granting exemption from assessment to revenue. But that will be extending the bounds of section 3 beyond its contents. The object of the Act as declared in the preamble is to remove certain doubts "as to the extent and operation of the Transfer of Property Act, 1882, and, as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority". Section 2 enacts that the provisions of the Transfer of Property Act do not apply to Crown grants. Then follows section 3 with a positive declaration that "all provisions, restrictions, conditions and limitations over" shall take effect according to their tenor.

Reading the enactment as a whole, the scope of section 3 is that it saves "provisions, restrictions, conditions and limitations over" which would be bad under the provisions of the Transfer of Property Act, such as conditions in restraint of alienations or enjoyment repugnant to the nature of the estate, limitations offending the rule against perpetuities and the like. But no question arises here as to the validity of any provision, restriction, condition, or limitation over, contained in Exhibit A on the ground that it is in contravention of any of the provisions of the Transfer of Property Act, and there is accordingly nothing on which section 3 could take effect.

23. In this view, section 3 must also be construed in the light of the preamble, and so construed, it cannot, for the reasons already given, have any bearing on the rights of the parties. Moreover, that section only enacts that "all provisions, restrictions, conditions and limitations over" shall take effect according to their tenor, and what is relied on is not any provision, restriction, condition or limitation over, in Exhibit A which according to its tenor entitles the respondents to hold the lands rent-free, but the absolute character of the interest conveyed under Exhibit A. Therefore, section 3 does not in terms apply."

(iv) Raje Anandrao vs. Shamrao and others, reported in AIR 1961 SC 1206 :

> "23.The last provision has been made to make it clear that the management will not take away the money but immediately give it to the representative of the pujaris for distribution among them. The provisions of the Public Trusts Act will be satisfied in that the management will be in a position to know how much has gone to the pujaris including the amount spent on dhoop, deep and neivedya. This provision will also take away any objection about there being interference with the private rights of the pujaris under the agreement of 1872."

(v) Ahmed Adam Sait and Others vs. Inayathullah Mekhri and others, reported in 1964 2 SCR 647 :

> "15. The first point which has been pressed before us by Mr. Setalvad is that the present suit is barred by reason of the fact that in the earlier suit instituted under s. 92 of the Code a scheme had already been framed by a court of competent jurisdiction and the decree by which the said scheme wAs ordered to be drawn binds all parties interested in the Trust. A suit under s. 92, it is urged, is a representative suit, and so, whether or not the present respondents actually appeared in that suit, they would be bound by the decree which had framed a scheme for the proper administration of the Trust. In support of this argument, reliance is placed on the decision of this Court in Raja Anandrao v. Shamrao (1), where it is observed that though the Pujaris were not parties to the suit under s. 92, the decision in that suit binds the pujaris as worshippers so far as the administration of the temple is concerned, because a suit under s. 92 is a representative suit and binds not only the parties thereto, but all those who are interested in the Trust. Mr. Setalvad has also relied on the two decisions of the Madras High Court, (1) in Ramados v. Hanumantha Rao (2) and (2) in Khaja Hassaanullah Khan v. Royal Mosque Trust Board (3) . The effect of those two decisions is that a decree passed in a suit filed under s. 92 framing a scheme is binding on all and it prevents every person whether a party to the suit or not from asserting in a subsequent suit rights which conflict with or attack the scheme.
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> 16. In assessing the validity of this argument, it is necessary to consider the basis of the decisions that a decree

passed in a suit under s. 92 binds all parties. The basis of this view is that a suit under s . 92 is a representative suit and is brought with the necessary sanction required by it on behalf of all the beneficiaries interested in the Trust. The said section authorises two or more persons having an interest in the Trust to file a suit for claiming one or more of the reliefs specified in clauses (a) to (h) of sub-section (1) after consent in writing there prescribed has been obtained. Thus, when a suit is brought under s. 92, it is brought by two or more persons interested in the Trust who have taken upon themselves the responsi- bility of representing all the beneficiaries of the Trust. In such a suit, though all the beneficiaries may not be expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of explanation VI to s. 11 of the Code. Explanation VI provides that where persons litigate bona fide in respect of a public right 'or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. It is clear that s. 1 1 read with its explanation VI leads to the result that a decree passed in a suit instituted by persons to which explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representative suit is brought under s. 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, therefore, are constructively barred by res judicata from reagitating the matters directly and substantially in issue in the, said earlier suit.

17. A similar result follows if a suit is either brought or defended under O. I, r. 8. In that case, persons either suing or defending an action are doing so in a representative character, and so, the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendants. Thus, it is clear that in determining the question about the effect of a decree passed in a representative suit, it is essential to enquire which interests were represented by the plaintiffs or the defendants. If the decree was passed in a suit under s. 92, it will become necessary to examine the plaint in

order to decide in what character the plaintiffs had sued and what interests they had claimed. If a suit is brought under O. 1 r. 8, the same process will have to be adopted and if a suit is defended under O. 1 r. 8, the plea taken by the defendants will have to be examined with a view to decide which interests the defendants purported to defend in common with others. The decision of this question would be material in determining the correctness of the argument urged by Mr. Setalvad before us.

22. That takes us to the next question as to whether it would be appropriate to change the scheme in the present litigation even though the present suit may not be technically barred by res judicata. Mr. Setalvad contends that it is a well-recognised principle of law that a scheme in regard to a public trust once framed should not be altered light- heartedly unless there are substantial reasons to do so and he has strenuously relied on the finding of the High Court that the Trustees appointed under the scheme ever since it was framed have, on the whole, managed the trust properties and its affairs in a reasonable and responsible manner and that the allegations of breach of trust which had been made against them in the present suit have been held not to be proved by both the courts below. There can be no doubt that if a scheme is framed in a suit brought under s. 92, it should not be changed unless there are strong and substantial reasons to do so. This position is well established and cannot and has not been disputed before us. As observed by Halsbury, when a scheme has been settled by the Charity Commissioners, the Court will not interfere with it unless the Commissioners have acted ultra vires, or the scheme contains something wrong in principle or in law, or by reason of changed circumstances, the continuance of the charity under the constitution established by the scheme has become impracticable. This principle was laid down as early as 1851 in the case of the Attorney-General v. The' Bishop of Worcester (1), where it was held that schemes which have been settled under the directions of the Court are not to be disturbed upon merely speculative view or in matters of discretion or regulation upon which judges or Attorneys- General may differ in opinion, or except upon substantial grounds and clear evidence, not only that the scheme does not operate beneficially, but that it can by alteration be made to do so consistently with the object of the foundation. The same principle was reiterated in 1872 in the case of Attorney-General v. Stewart (1872) L.R.14."

(vi) Bishambhar Dayal Chandra Mohan and others vs. State of Uttar Pradesh and others, reported in (1982) 1 SCC 39 :

> "46. The first and second contentions may conveniently be dealt with together. In order to appreciate these contentions, it is necessary to state a few facts:
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> During the year 1979-80, the country was victim to a very serious drought which affected with Kharif as well as Rabi crops. The Government of India, therefore, fixed a target of 9.5 million tonnes of wheat to be purchased in the summer months of 1981 for the national buffer stock. It fixed the procurement price at Rs. 130 per quintal as against the support price of Rs. 127 per quintal recommended by the Agricultural Price Commission to provide a better incentive to the farmers. The procurement was carried out as a measure of price support without any restriction on movement from one State to another. However, some of the States were implementing local laws with regard to ensuring that the private trade adhered to the stock limit restrictions on them and did not try to corner stocks for speculation purposes. The original target fixed for procurement was 9.5 million tonnes but at the end of June, only 6.5 million tonnes had been purchased, leaving a deficit of 3 million tonnes. The result was that the Government of India was thus forced to buy 1.5 million tonnes of wheat in the world market. The Government's procurement drive was mainly frustrated by wholesale dealers of foodgrains cornering the stocks of wheat by paying a price higher than the procurement price to the farmers.
>
> 47. The imperatives of the situation demanded that the speculative tendencies of the trade were curbed by strictly enforcing the stock limits of traders. Under original cl. 4 of the Uttar Pradesh Foodgrains (Procurement and Regulation of Trade) Order, 1978, a wholesale dealer, commission agent or a retailer could have in stock wheat not more than 750 quintals, 750 quintals and 100 quintals respectively, at any time. In view of the worsening situation in the national buffer stock and in the light of the experience gained during the past few years, the State Government was of the opinion that it was necessary and expedient to re-fix the stock limits of such dealers. This was expected to maximise procurement of wheat to meet the requirement of public distribution, as well as, the

buffer stock.

48. It cannot be asserted that the restriction imposed by the State Government on wholesale dealers of wheat is either arbitrary or is of an excessive nature. The fixation of the stock limit of wheat to be possessed by wholesale dealers, at any time, at 250 quintals is an important step taken by the State Government to obviate hoarding and black-marketing in wheat which is in short supply. It is hardly necessary to emphasise the extent and urgency of the evil sought to be remedied thereby. Perhaps fixation of the minimum limit of wheat permitted to be possessed by a wholesale dealer at 250 quintals, at a time, is too low, but the restriction so imposed cannot be treated to be arbitrary or of an excessive nature, beyond what is required in the national interest. It is a matter of common knowledge that wholesale dealers of foodgrains mainly operate in large cities and towns and have the means and capacity to manipulate the market by withholding stocks of a commodity. There was need to check such speculative tendencies in the trade. It was therefore felt expedient to re-fix the stock limit of wheat for wholesale dealers at 250 quintals at a time, as in the case of a commission agent. The underlying idea is that the wholesale dealers should be allowed to continue their trading activities within reasonable limits. The fixation of stock limit at 250 quintals implies that wholesale dealers can have at any time, in stock, a wagon-load of wheat. In Krishan Lal Praveen Kumar & Ors. etc. v. The State of Rajasthan, this Court has interpreted the words 'at any time' as meaning 'at any given time'. This means that a wholesale dealer should not have in stock more than 250 quintals at a time. But there is nothing to prevent a wholesale dealer from entering into a series of transactions during the course of the day. This Court in Krishan Lal Parveen Kumar's case (supra) and Suraj Mal Kailash Chand & Ors. v. Union of India & Anr., has upheld the validity of a similar notification dated March 23, 1981, issued by the State Government of Rajasthan in exercise of the powers conferred by cl. 18 of the Rajasthan Trade Articles (Licensing and Control) Order, 1980, fixing the maximum limit of wheat to be possessed by a dealer at any one time at 200 quintals, on the ground that it is a reasonable restriction by the State Government within the meaning of Art. 19(6) of the Constitution. In view of these decisions, it is difficult to conceive as to how the contention based on Art. 19(1)(g) of the Constitution can survive.

49. True it is, if the governmental action is arbitrary or there is no rational nexus to the object sought to be achieved it is liable to be struck down as violative of Art. 14 of the Constitution. The State Government has adopted various measures in the interest of the general public for the control of production, supply and distribution of, and trade and commerce in, essential commodities. To obviate hoarding and blackmarketing in foodstuffs, it has promulgated the Order. It introduces a system of checks and balances to achieve the object of the legislation, i.e., to ensure equitable distribution and availability of essential commodities at fair prices. It cannot be said that looking to the prevailing conditions, the imposition of such restrictions does not satisfy the test of reasonableness. Nor can it be said that the fixation of such stock limit is arbitrary or irrational having no nexus to the object sought to be achieved and is, therefore, violative of Art. 14. On the contrary, the limitation imposed fixing a stock limit for a wholesale dealer at 250 quintals is a reasonable restriction within the meaning of Art. 19(6) of the Constitution.

50. One further point requires to be noticed. The contention that the action taken by the State Government in issuing the impugned teleprinter message amounts to an 'intrusion' on the fundamental right to carry on trade or business under Art. 19(1)(g) or on the freedom of trade, commerce and intercourse under Art. 301 of the Constitution appears to be wholly misconceived. As already stated the instructions conveyed by the State Government by the impugned teleprinter message imposing the requirement for the making of an endorsement by the Deputy Marketing Officer or the Senior Marketing Officer or the physical verification of stocks of wheat during the course of transit, are not a 'restriction' on the fundamental right to carry on trade or business guaranteed under Art. 19(1)(g) or on the freedom of trade, commerce and intercourse under Art. 301. These are nothing but regulatory measures to ensure that the excess stock of wheat held by a wholesale dealer, commission agent or a retailer is not transported to a place outside the State or from one district to another. Even if these requirements are considered to be a 'restriction' on inter- State or intra-State trade, that is, across the State or from one part of the State to another, the limitation so imposed on the enjoyment of the right cannot be considered to be arbitrary or of an excessive

nature and thus violative of Art. 19(1)(g) or Art. 301 of the Constitution. The State Government in its return has stated that there is no ban on the export of wheat from the State of Uttar Pradesh to various other States or from one district to another within the State, subject to the making of an endorsement by the Deputy Marketing Officer or the Senior Marketing Officer concerned. The petitioners who are wholesale dealers of foodgrains in the State of Uttar Pradesh are, therefore, free to carry on their business within the permissible limits, i.e., they may carry on their trade or business or enter into inter-State or intra-State transactions of wheat subject to the stock limit of 250 quintals at a time.

(vii) Municipal Corporation of Delhi vs. Gurnam Kaur, reported in AIR 1989 1 SCC 101 :

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and

pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

(viii) R.Venugopala Naidu and others vs. Venkatarayulu Naidu Charities and others, reported in AIR 1990 SC 444 :

"7. Mr. S. Padmanabhan, learned counsel for the appellants has vehemently argued that though the appellants were not shown as parties in suit-title but the suit under Section 92 of Civil Procedure Code being a representative suit the scheme-decree binds not only the parties thereto but all those who are interested in the trust. According to him "parties" in clause 14 of the scheme decree would include appellants and all those who are interested in the trust. He has relied on Raje Anandrao v. Shamrao and Others, [1961] 3 SCR 930 wherein this Court held as under:

" ..... It is true that the pujaris were not parties to the suit under s. 92 but the deci- sion in that suit binds the pujaris as wor- shipers so far as the administration of the temple is concerned, even though they were not parties to it, for a suit under s. 92 is a representative suit and binds not only the parties thereto but all those who are inter- ested in the trust."

8. The learned counsel further relied on Ahmed Adam Sait and Others v. Inayathullah Mekhri and Others, [1964] 2 SCR 647 wherein this Court observed as under:

"A suit under s. 92, it is urged, is a repre- sentative suit, and so, whether or not the present respondents actually appeared in that suit, they would be bound by the decree, which had framed a scheme for the proper administra- tion of the Trust. In support of this argu- ment, reliance is placed on the decision of this Court in Raja Anandrao v. Shamrao, where it is observed that though the Pujaris were not parties to the suit under s. 92, the decision in that suit binds the pujaris as worshipers so far as the administration of the temple is concerned, because a suit under s. 92 is a representative suit and binds not only the parties thereto, but all those who are interested in the Trust..... "

" ..... In assessing the validity of this argument, it is necessary to consider the basis of the decisions that a decree passed in a suit under s. 92 binds all parties. The basis of this view is that a suit under s. 92 is a representative suit and is brought with the necessary sanction required by it on behalf of all the beneficiaries interested in the Trust. The said section authorises two or more persons having an interest in the Trust to file a suit for claiming one or more of the reliefs specified in clauses (a) to (h) of sub-section (1) after consent in writing there prescribed has been obtained. Thus, when a suit is brought under s. 92, it is brought by two or more persons interested in the Trust who have taken upon themselves the responsi- bility of representing all the beneficiaries of the Trust. In such a suit, though all the beneficiaries may not be expressly impleaded, the action is instituted on their behalf and relief is claimed in a representative character. This position immediately attracts the provisions of explanation VI to s. 11 of the Code. Explanation VI provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the pur- poses of this section, be deemed to claim under the persons so litigating. It is clear that s. 11 read with its explanation VI leads to the result that a decree passed in a suit instituted by persons to which explanation VI applies will bar further claims by persons interested in the same right in respect of which the prior suit had been instituted. Explanation VI thus illustrates one aspect of constructive res judicata. Where a representa- tive suit is brought under s. 92 and a decree is passed in such a suit, law assumes that all persons who have the same interest as the plaintiffs in the representative suit were represented by the said plaintiffs and, there- fore, are constructively barred by res judica- ta from reagitating the matters directly and substantially in issue in the said earlier suit.

A similar result follows if a suit is either brought or defended under 0.1., r. 8. In that case per- sons either suing or defending an action are doing so in a representative character, and so the decree passed in such a suit binds all those whose interests were represented either by the plaintiffs or by the defendants ..... "

The legal position which emerges is that a suit under

> Section 92 of the Code is a suit of a special nature for the protection of Public rights in the Public Trusts and chari- ties. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 of the Code and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are on the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 of the Code is thus a representative suit and as such binds only the parties named in the suit-title but all those who are interested in the trust. It is for that reason that explanation VI to Section II of the Code constructively bar by res judicata the entire body of interested persons from reagitating the matters directly and substantially in issue in an earlier suit under Section 92 of the Code."

(ix) Krishena Kumar and others vs. Union of India and others, reported in 1990 4 SCC 207 :

> "59.The next question debated is that of financial implica- tions. It is submitted that given the fact that the budget for the year 1990-91 for disbursement of pension is Rs.900 crores (as per page 11 of the Budget of the Railway Revenue and Expenditure of the Central Government for 1990-91), the additional liability which would arise by giving relief to the Petitioners would be insignificant in comparison. Ac- cording to the petitioners as per their affidavit dated 15.9.88, the additional liability would come to Rs. 18 crores per annum and this figure would steadily decrease as the number of P.F. retirees diminishes every year due to the fact that this question arises only with respect to very old retirees, and a substantial number of them pass away every year.
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> 60. The Government in its affidavit dated 21.9.88 has stated that the additional liability as far as the Railway employ- ees are concerned, would be Rs.50 crores a year. This is based on the assumption that there are 79,000

surviving P.F. retirees. Apart from the fact that this number of 79,000 was based on calculations made in 1988, and would be greatly reduced by this time, the petitioners submit that the actual number of survivors would only be about 38,000. Thus, the actual burden would be less than half. Further, even assuming that the figure of 79,000 put forth by the Government is correct, the aver- age annual expenditure per retiree for pension calculated by the Government is incorrect as the calculation includes the non-recurring arrear payments for the year 1987-88. Taking the correct figures of total pension outlay and total number of beneficiaries the per capita pension expenditure per annum works out to Rs.4521. Multiplying this by 79,000 (assuming the figures of the Railways to be correct) the annual expenditure comes to Rs.35.71 crores. This compared to the current budget of pensions of Rs.900 crores, is quite insignificant and can be easily awarded by this Court as was done in Nakara, it is urged.

61. It is submitted in the alternative that if this Court feels that a positive direction cannot be made to the Gov- ernment in this regard, it is prayed that at least an option should no given to the respondents either to withdraw the benefit of switching over to pension from every one or to give it to the petitioners as well, so that the discrimina- tion must go.

62. We are not inclined to accept either of these submissions. The P.F. retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includable in the Annual Financial Statement, this Court has to be loath to pass any order to give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution.

63. Lastly, the question of feasibility of converting all living P.F. retirees to Pension retirees was debated from the point of view of records and adjustments. Because of the view we have taken in the matter, we do not consider it necessary to express any opinion.

64. Mr. C.V. Francis in W.P. No. 1165 of 1989 argued the case more or less adopting the arguments of Mr. Shanti Bhushan. Mrs. Swaran Mahajan, in W.P. No. 1575 of 1986, submitted that the rule as to commuted portion of the pen- sion reviving after 15 years should be applied to P.F. retirees

so that the corpus of Provident Fund dues received more than 15 years ago should be treated as committed por- tion of pension and be allowed to revive for adjustments against pension. In the view we have taken in this case it is not necessary to express any opinion on this question."

(x) State of U.P. and another vs. Synthetics and Chemicals Ltd. and another, reported in 1991 4 SCC 139 :

"5. Does this principle extend and apply to a conclusion of law, Which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English Courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. A decision passed sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular' point of law involved in the decision is not perceived by the Court or present to its mind' (Salmond 12th Edition). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd., [1941] IKB 675 the Court did not feel bound by earlier decision as it was rendered 'wit- hout any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court inMunicipal Corporation of Delhi v. Gumam Kaur, [1989] 1 SCC 101. The Bench held that, 'prece- dents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perperated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contem- plated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judg- ment without any occasion is not ratio decedendi.In Shama Rao v. State of Pondicherry, AIR 1967 SC 1680 it was ob- served, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

(xi) Inder Parshad vs. Union of India, reported in (1994) 5 SCC 239 :

> "5. In this case admittedly the Government being the owner of the land, the appellant held the demised land as lessee with superstructure built thereon and was in possession and enjoyment of the same on the date of acquisition. The contents of the award extracted hereinbefore clearly indicate that the Land Acquisition Collector could not determine compensation payable towards the leasehold interest held by the appellant. Being an owner the Government is not enjoined to acquire its own interest in the land or land alone for public purpose. When its land is granted on lease in favour of a lessee its power to resume the land is subject to non-fulfilment of the terms and conditions of the lease by the lessee. So long as the lessee acts and complies with the covenants contained in the lease or the grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Government should get absolute title thereof free from all encumbrances. Compensation becomes payable for the leasehold right or interest held by the lessee or grantee when the land is acquired. The point becomes clear from the following illustrations. Take a case where the Government granted lease of agricultural land on the annual payment of rent with a covenant that the Government is entitled to resume the land when needed for public purpose or as when the Government finds that the land is required for public purpose. In terms of the covenants, the Government is entitled to exercise its option to determine the lease though the lessee has been complying with the condition of payment of annual premium or rent and resume the land in accordance with terms of the grant. In that event the need to take recourse to acquisition and to make compensation does not arise. Take a case where the Government granted the lease of the open land with, permission to the lessee to construct a building for his quiet enjoyment with appropriate covenants and the lessee with permission constructed the building and by complying with the covenants of the lease was in quiet enjoyment. The self same property, when required for public purpose, the Government cannot unilaterally determine the lease and call upon the lessee to deliver the possession. Therefore, the Government is required to exercise the power of eminent domain by invoking the provisions under the

Land Acquisition Act for getting such land. The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. The lessee being the owner of the superstructure and the Government being the owner of the land, if compensation is determined for both the components, then the same has to be apportioned between them. At what proportion the lessor and the lessee are entitled to receive the compensation has to be determined. In the absence of any covenant in the lease for payment and in the absence of any specific data available to him, the Collector has to determine the respective shares at which the compensation is to be apportioned between the Government and the lessee, the course open to the Land Acquisition Collector is to determine the total compensation, make an award and make a reference to the civil court under Section 30 for decision on appointment. Exactly that is the situation on the facts of this case. Take another illustration. The Government grants a patta of its land subject to payment of land revenue. Later, the land is required for public purpose. The payment of land revenue is at par with the payment of land revenue payable by a private owner to the State. By grant of patta, the title has been vested in the grantee. Therefore, the grantee is entitled to the full compensation of the acquired land."

(xi) Arnit Das vs. State of Bihar, reported in 2000 5 SCC 488 :

"22. All this exercise would have been avoided if only the Legislature would have taken care not to leave an ambiguity in the definition of juvenile and would have clearly specified the point of time by reference to which the age was to be determined to find a person a juvenile. The ambiguity can be resolved by taking into consideration the Preamble and the Statement of Objects and Reasons. The Preamble suggests what the Act was intended to deal with. If the language used by Parliament is ambiguous the Court is permitted to look into the preamble for construing the provisions of an Act (M/s. Burrakur Coal Co. Ltd. & M/s. East Indian Coal Co. Ltd. Vs. The Union of India and others, AIR 1961 SC 954). A preamble of a statute has been said to be a good means of finding out its meaning and, as it were, the key of understanding of it, said this Court in A. Thangal Kunju Musaliar Vs. M. Venkatachalam Potti AIR 1958 SC

246. The Preamble is a key to un-lock the legislative intent. If the words employed in an enactment may spell a doubt as to their meaning it would be useful to so interpret the enactment as to harmonise it with the object which the Legislature had in its view. The Legislative aims and objectives set out in the earlier part of this judgment go to show that this Legislation has been made for taking care of the care and custody of a juvenile during investigation, inquiry and trial, i.e., from a point of time when the juvenile is available to the law administration and justice delivery system; it does not make any provision for a person involved in an offence by reference to the date of its commission by him. The long title of the Act too suggests that the content of the Act is the justice aspect relating to juveniles.

23. We make it clear that we have not dealt with the provisions of Chapter VI dealing with special offences in respect of juveniles. Prima facie, we feel that the view which we have taken would create no difficulty even in assigning meaning to the term juvenile as occurring in Chapter VI(Sections 41 to 45) of the Act because a juvenile covered by any of these provisions is likely to fall within the definition of neglected juvenile as defined in clause (l) of Section 2 who shall also have to be dealt with by a Juvenile Board under Chapter III of the Act and the view taken by us would hold the field there as well. However, we express no opinion on the scope of Chapter VI of the Act and leave that aspect to be taken care of in a suitable case. At any rate in the present context we need not vex our mind on that aspect. Section 2 which defines juvenile and neglected juvenile itself begins by saying that the words defined therein would have the assigned meaning unless the context otherwise requires. So far as the present context is concerned we are clear in our mind that the crucial date for determining the question whether a person is juvenile is the date when he is brought before the competent authority.

24. So far as the finding regarding the age of the appellant is concerned it is based on appreciation of evidence and arrived at after taking into consideration of the material available on record and valid reasons having been assigned for it. The finding arrived at by the learned A.C.J.M. has been maintained by the Sessions Court in appeal and the High Court in revision. We find no case having been made

out for interfering therewith."

(xii) Shanmugavel Nadar vs. State of Tamilnadu and another, reported in 2002 8 SCC 361 :

> "16. In the present case, the order dated 10.9.1986 passed by this Court can be said to be declaration of law limited only to two points - (i) that in a petition putting in issue the constitutional validity of any State Legislation the State is a necessary party and in its absence the issue cannot be gone into, and (ii) that a belated prayer for impleading a necessary party may be declined by this Court exercising its jurisdiction under Article 136 of the Constitution if the granting of the prayer is considered by the Court neither necessary nor proper to allow at the given distance of time. By no stretch of imagination can it be said that the reasoning or view of the law contained in the decision of the Division of the High Court in M. Varadaraja Pillai 's case had stood merged in the order of this court dated 10.9.1986 in such sense as to amount to declaration of law under Article 141 by this Court or that the order of this Court had affirmed the statement of law contained in the decision of High Court.
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> 17. We are clearly of the opinion that in spite of the dismissal of the appeals on 10.9.1986 by this Court on the ground of non-joinder of necessary party, though the operative part of the order of the Division Bench stood merged in the decision of this Court, the remaining part of the order of Division Bench of the High Court cannot be said to have merged in the order of this Court dated 10.9.1986 nor did the order of this Court make any declaration of law within the meaning of Article 141 of the Constitution either expressly or by necessary implication. The statement of law as contained in the Division Bench decision of the High Court in M. Varadaraja Pillai's case would therefore continue to remain the decision of the High Court, binding as a precedent on subsequent benches of coordinate or lesser strength but open to reconsideration by any bench of the same High Court with a coram of judges more than two.
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> 18. The Full Bench was not dealing with a prayer for

review of the earlier decision of the Division Bench in M. Varadaraja Pillai's case and for setting it aside. Had it been so, a different question would have arisen, namely, whether another Division Bench or a Full Bench had jurisdiction or competence to review an earlier Division Bench decision of that particular Court and whether it could be treated as affirmed, for whatsoever reasons, by the Supreme Court on a plea that in view of the decision having been dealt with by the Supreme Court the decision of the High Court was no longer available to be reviewed. We need not here go into the question, whether it was a case of review, or whether the review application should have been filed in the High Court or Supreme Court. Such a question is not arising before us.

19. Under Article 141 of the Constitution, it is the law declared by the Supreme Court, which is binding on all Courts within the territory of India. Inasmuch as no law was declared by this Court, the Full Bench was not precluded from going into the question of law arising for decision before it and in that context entering into and examining the correctness or otherwise of the law stated by the Division Bench in M. Varadaraja Pillai's case and either affirming or overruling the view of law taken therein leaving the operative part untouched so as to remain binding on parties thereto.

20. Inasmuch as in the impugned judgment, the Full Bench has not adjudicated upon the issues for decision before it, we do not deem it proper to enter into the merits of the controversy for the first time in exercise of the jurisdiction of this Court under Article 136 of the Constitution. We must have the benefit of the opinion of the Full Bench of the High Court as to the vires of the State legislation involved.

21. For the foregoing reason, the appeals are allowed. The impugned judgment of the High Court is set aside. All the appeals shall stand restored before the Full Bench of the High Court and shall be heard and decided in accordance with law. The Full Bench while doing so, shall not feel inhibited by the fact that the appeals against the decision in M. Varadaraja Pillai's case were dismissed by this Court which, as we have already stated, were dismissed only on the technical ground without any law being laid down by this Court. We also clarify that in view of the time that has already been lost, the Full Bench may proceed to hear and decide all the controversies arising for decision in the writ

petitions in the High Court, that is, the Full Bench may obviate the need of sending the matter bade to the Division Bench for hearing on such other issues as are not decided by it Instead it may decide all the issues raised in the writ petitions fully and finally so far as the High Court is concerned. The hearing before the Full Bench shall be expedited as there are a number of writ petitions and a large number of cases are likely to be affected by the view that the Full Bench may ultimately take. In view of the writ petitions having been restored for hearing on the file of the High Court, we also clarify that all the interim orders, which were passed by the High Court shall also stand restored. Needless to say the High Court shall have the liberty of reconsidering the interim orders passed by it if any such occasion arises."

(xiii) Zee Telefilms Ltd., and another vs. Union of India and others, reported in 2005 4 SCC 649 :

"282. Are we bound hands and feet by Pradeep Kumar Biswas (supra)? The answer to the question must be found in the law of precedent. A decision, it is trite, should not be read as a statute. A decision is an authority for the questions of law determined by it. Such a question is determined having regard to the fact situation obtaining therein. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well-known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it."

(xiv) Tika Ram vs. State of U.P. and others, reported in 2009 10 SCC 689:

"59. It was reiterated by Shri Trivedi, Learned Senior Counsel, as also, Shri Qamar Ahmed, Learned Counsel that the question of constitutional validity of the Act was not considered by the High Court as the Act was held to be valid in GDA's case (cited supra) and in MDA's case (cited supra). It was, however, urged that the question of Constitutional validity was never considered in these cases. Reliance was placed on judgments reported as Arnit Das v. State of Bihar

reported in 2000 (5) SCC 488, State of UP & Anr. v. Synthetics & Chemicals Ltd. & Anr. reported in 1991 (4) SCC 139, Nirmal Jeet Kaur v. State of Madhya Pradesh & Anr. reported in 2004 (7) SCC 558, ICICI Bank & Anr. v. Municipal Corporation of Greater Bombay & Ors. reported in 2005 (6) SCC 404, 7 A.R. Antulay v. R.S. Naik & Ors. reported in 1988 (2) SCC 602, Zee Telefilms Ltd. & Anr. v. Union of India & Ors. reported in 2005 (4) SCC 649, P. Ramachandra Rao v. State of Karnataka reported in 2002 (4) SCC 578, Nand Kishore v. State of Punjab reported in 1995 (6) SCC 614, Isabella Johnson v. M.A. Susai reported in 1991 (1) SCC 494. We do not think that the law laid down in these cases would apply to the present situation. In all these cases, it has been basically held that a Supreme Court decision does not become a precedent unless a question is directly raised and considered therein, so also it does not become a law declared unless the question is actually decided upon. We need not take stock of all these cases and we indeed have no quarrel with the propositions settled therein. However, we may point out that, firstly, the question of validity is settled in MDA's case (cited supra). This is apart from the fact that we are of the opinion that there is nothing wrong with the Amending Act insofar as its Constitutional validity is concerned. We have already rejected the argument that there was any discrimination between Ujariyaon Part II and Ujariyaon Part III schemes. We are convinced with the explanation given by the State Government as to why Ujariyaon Part III scheme was left out of the consideration of validation. Indeed the acquisition therein could not have been validated on account of the time having lapsed for doing so. Once Sections 2 and 3 and the proviso are read in the manner indicated in MDA's case (cited supra) as also in the light of observations made by us, no question remains of any Constitutional invalidity. We are not at all impressed by the contention raised that the Amending Act cannot pass the test of Article 14. We hold accordingly."

(xv) Rajendra Gupta and others vs. The Corporation of Chenai, reported in Manu/TN/3722/2011 :

"117. Even though, Appellants came into possession by virtue of deed of sublease infavour of their father N.D.Gupta, as discussed earlier, the main lease expired on 30.4.1985, the sublease also came to an end and the

possession of Appellants is not lawful beyond 30.4.1985. As pointed out by the learned Judge under clause 6 of registered sub-lease dated 17.7.1968, Plaintiffs were obliged to surrender the superstructures to the Trust without claiming any compensation after the expiry of the initial period of 18 years from 01.4.1968 to 31.3.1986 or atleast the period of extended term of 22 years viz., 31.3.2008. Viewed from any angle, possession of Appellants are not lawful one beyond 30.4.1985.

118. Considering all the aspects and observing that document dated 12.10.1973 is vitiated, learned Judge held that Appellants are not entitled to any compensation for the superstructures. When sublease dated 12.10.1973 is vitiated, and when the term of lease itself come to an end on 30.4.1985, Appellants cannot claim any right beyond that and therefore, in our considered view, Appellants are not entitled to claim any compensation.

119. Whether Plaintiffs are entitled to equitable relief of interim injunction:-

Learned Senior Counsel for Appellants contended that in an application for grant of temporary injunction, Court is concerned only with prima facie case and balance of convenience and while so, learned Judge has gone beyond the scope of the application and dealt with the matter as if Court is dealing with the main suit itself. Learned Senior Counsel would further contend that learned single Judge erred in dealing with all issues arising in the suit which need to be adjudicated only after trial. Learned Senior Counsel for Appellants would also contend that Appellants have put up multi-storied buildings and the Civil Engineers appointed by the Plaintiffs have arrived at the value of the buildings at Rs.5.73 crores and Rs.3.96 crores and Rs.6.08 crores respectively and if interim injunction is not granted, Appellants would be subjected to irreparable loss.

120. The well settled principles for granting a temporary injunction, either under Order 39, Rules 1 and 2 C.P.C. or under Section 151 of C.P.C. in favour of a party, are:- (i) prima facie case, (ii) balance of convenience and (iii) irreparable loss. Apart from prima facie case, the party seeking injunction has to establish balance of convenience and irreparable injury also. A person who seeks aid of the Court must establish prima facie case in his favour though it is not necessary for him to show at that stage a clear legal

title; but must satisfy the Court that there is a fair question to be tried.

121. Prima facie case means that there is a serious question to be tried and that the claim of the Plaintiffs is not frivolous or vexatious. It may not be necessary for the Plaintiff to make out a clear, legal title, but he has to satisfy the Court that he has fair question to be tried. A temporary injunction would justify only if it was based on good prima facie case made out by the Plaintiff showing that in all probability he is entitled to get permanent injunction sought before going through the evidence depending on the pleadings and documents placed before the Court.

122. As discussed earlier, term of lease of the Trust expired on 30.04.1985. Even though, Trust had obtained decree in O.S.No.1349 of 1985, lease deed never came to be executed. In the mean while, Trust arrived at a compromise under which Trust had surrendered possession of Victoria Public Hall building and the demised land to the owner Corporation. Therefore, possession of Appellants beyond 30.4.1985 is not lawful possession. Assuming the best possible for the Appellants as per the lease deed dated 17.07.1968 for 18 years i.e. till 31.03.1986 and thereafter renewable for 22 years i.e. 31.03.2008. Even assuming the best possible for the Appellants, possession of the Appellants cannot be said to be lawful possession beyond 30.04.1985 entitling them to obtain interim injunction from the Court as against the true owner Chennai Corporation. The object of interlocutory Application is to protect the Plaintiff against the injury by violation of his right for which he could not adequately be compensated for damages. Beyond 30.4.1985 when the possession of the Appellants is not lawful possession, Appellants cannot be said to have established prima facie case to obtain an injunction against the lawful owner. A person in wrongful possession will not be entitled to protection by an injunction against the lawful owner. By the grant of interim injunction, 1st Defendant-Corporation would not be in a position to take possession and maintain the VP Hall and the surrounding land.

123. Subsequent development is also relevant to be noted. Enormous amount of traffic congestion in and around the Chennai City has led both Central as well as State Government to contemplate viable solution to reduce the congestion in the traffic and to help the general public which

paved the way for Chennai Metro Rail. Chennai Metro Rail Limited (CMRL) aims to provide major railway inter-linking to the suburban railway station as MRTS. First phase of Chennai Metro Rail Project is being implemented by CMRL at an estimated cost of Rs.14,600 crores. In G.O.Ms.No.148, Planning, Development and Special Initiatives (SI) Department, dated 20.11.2009, Government constituted a High Power Committee (HPC) and discussed the proposal of Chennai Metro Rail for transfer of lands of State Government departments/Boards/Corporation of Chennai both on permanent and temporary basis. CMRL proposed to locate Central Metro Station [Corridor I & II] and other allied facilities in the land belonging to the Chennai Corporation which was leased out to V.P. Hall Trust and or Government lands.

124. Most of the land proposed for Chennai Metro Rail Project is Government land. Government lands cater to 75% of the project land requirement and only 25% of the project land requirement is proposed on private patta lands. Land in Block No.28 in T.S.No.1269/4 in Vepery village, Fort Tondiarpet Taluk belonging to the Chennai Corporation to an extent of 2187 sq. mts was directed to be transferred and alienated to CMRL in a meeting held by the HPC on 22.07.2010 and a Government Order to that effect was passed by the Government in G.O.Ms.No.132, Planning Development & Special Initiatives (SI) Department dated 27.08.2010 and under the said order, the Secretary to Government, Municipal Administration & Water Supply Department is directed to issue necessary order of alienation of the aforesaid land to CMRL. At the time of finalising the alignment of Corridors and design of the Metro Station, an additional requirement of 955 sq. mts in the Corporation land occupied by Picnic Hotel has been arrived at for locating station related structures above ground. The above said land shall be utilised for Central Metro Station, ventilation shaft, ancillary building, traffic integration etc. The said requirement was approved in the III High Power Committee held on 04.01.2011. Chennai Central underground Metro Station will be vital and key interchange between Metro Rail Corridor I & II where the transfer of passengers will take place between Corridor I & II at Chennai Central Metro Station which is stated to be the complex underground station with two levels (one for each corridor). This is to ensure inter modal integration for the public which will

substantially reduce the traffic congestion in the City. The subsequent events and the predominant public purpose is an important factor to be taken into consideration. If any injunction is granted infavour of Appellants that would also stall the Chennai Metro Rail Project which is aimed at developing the infrastructure of the City of Chennai.

125. Upon consideration of all materials in issue, the learned Judge rightly dismissed the applications declining temporary injunction. Exercise of discretion by the trial Court should not be lightly interfered with by the Appellate Court. Only if the trial Court erroneously exercised its discretion and has acted perversely without taking into consideration the entire material on record, it is the duty of the Appellate Court to interfere with the order of the trial Court. In the instant case, Appellants are in occupation of the large extent of prime property on a meagre rent of Rs.4000/- per month. Upon consideration of the facts and materials, the learned Judge has rightly held that Appellants are not entitled to get injunction and there is no improper exercise of discretion warranting interference."

(xvi) Purbanchal Cables and Conductors Pvt. Ltd. vs. Assam State Electricity Board and another, reported in 2012 7 SCC 462 :

"47) The learned Senior Counsel would rely on the decision of this Court in Municipal Corporation, Delhi Vs. Gurnam Kaur - (1989) 1 SCC 101. This Court has held:

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force

of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio"

12. In Gerard v. Worth of Paris Ltd. (k)., the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the

type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority"

48) In the case of State of U.P. Vs. Synthetics and Chemicals Ltd. - (1991) 4 SCC 139, His Lordship R.M. Sahai. J., in his concurring judgment set out the principles of per incurium and sub silentio has held thus:

"40. Incuria" literally means "carelessness". In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority" (Young v. Bristol Aeroplane Co. Ltd.). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubeythis Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding."

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. â€œA decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, precedents sub-silentio and without argument are of no moment. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on

consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, â€˜it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

49) In the case of Arnit Das Vs. State of Bihar - (2000) 5 SCC 488, this Court held:

"A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined. (See State of U.P. v. Synthetics & Chemicals Ltd. SCC, para 41.)"

50) In the case of Tika Ram Vs. State of Uttar Pradesh - (2009) 10 SCC 689, it was held:

"104. We do not think that the law laid down in these cases would apply to the present situation. In all these cases, it has been basically held that a Supreme Court decision does not become a precedent unless a question is directly raised and considered therein, so also it does not become a law declared unless the question is actually decided upon. We need not take stock of all these cases and we indeed have no quarrel with the propositions settled therein..."

16. On the above contentions, we have heard the learned counsel for the respondents, who would submit that the subject land is the property of the State, which was leased out to the Trust with certain conditions, and, as there

was violation of conditoins, coupled with the need of the land for railways for a public purpose, the State has resumed the land after following the due procedure and, hence, the act of the State in resuming the land cannot be faulted with.

17. Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for the State in all the Writ Appeals, would vehemently contend that there is a violation of terms and conditions of the lease and further the land in question has been required by CMRL for a public purpose and, therefore, for the welfare of the people of the State and in order to ease out the congestion, the State has taken immediate action to resume the land, which belongs to itself. He also submits that Section 3 of the Government Grants Act empowers the State to resume the land without any procedural impediment, as the land is immediately needed for the public purpos. Finally, he would contend that the ratio laid down by the Supreme Court in this regard is binding on the appellants, as their survey numbers have also been taken into consideration while rendering the finding, and the rules contemplated under the Government Grants Act have been rightly invoked by the State while proceeding with the impugned action and, therefore, there is no legal infirmity in the impugned order passed by the Government. The learned Additional Advocate General has relied upon the following authorities:

(i) State of U.P. vs. Zahoor Ahmad, reported in (1973) 2 SCC 547 :

> "16. Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the right, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law."

(ii) Hajee S.V.M.Mohamed Jamaludeen Bros. & Co. vs. Govt. of TN, reported in (1997) 3 SCC 466 :

> "9. Section 2 of the Grants Act insulates all grants and all transfers of land or any interest therein made by the government from the checks of the provisions of Transfer of Property Act. Section 3 of the Grants act protects the terms of such grant from the provisions of any other law. We extract the above two provisions hereunder :
>
> > "2. Transfer of property Act, 1882, not to apply to Government grants.- Nothing in the Transfer of Property act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of the Government to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.
> >
> > 3. Government grants to take effect according to their tenor:- All provisions, restrictions, conditions and limitations, contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor, any rule of law, statute or enactment of the contrary notwithstanding."

10. The combined effect of the above two sections of the Grants Act is that terms of any grant or terms of any transfer of land made by a government would stand insulated from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The two provisions are so framed as to confer unfettered discretion on the government to enforce any condition or limitation or restriction in all types of grants made by the government to any person. In other words, the rights, privileges and obligations of any grantee of the government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law.

11. The above legal position was recognised by the courts in India before the Constitution of India came into being. (Surja Kanta Roy Choudhary and Ors. v. Secretary of State and Raza Hussain Khan and Ors. v. Sayid Mohd. and Ors. AIR (1938) Oudh 175). The position continued to be so even after the Constitution came into force (State of U.P. v. Zahoor Ahmad."

(iii) Chitra Kumar (Smt) vs. Union of India and others, reported in (2001) 3 SCC 208 :

"32. We have considered the rival submission. In our view Mr. Rohtagi is quite right. It is now too late in the day for Mr. Andhyarujina's clients to take a contrary stand. Mr. Yogeshwar Prasad's clients have on facts lost in all Courts below. Notice to produce documents, given belatedly in some other case, is of no relevance so far as these Appeals are concerned. The practice of annexing irrelevant documents and trying to rely on them for the first time in the Appeal or in Review Petitions in the High Court should be deprecated.

33. In Civil Appeal Nos. 917-918 of 1998 it is clear that, at all stages, the case has progressed on the basis that it was not disputed that the land was on old grant terms. Of course, in the Plaint, in Para. 4(b) it had been averred that the land was not on old grant terms. However, except for making such an averment that point has clearly not been pressed at any stage. In evidence given by the plaintiff and/or on his

behalf, there is no statement that the land was of plaintiff ownership and/or that the land did not belong to the Government. During trial the documents, now sought to be relied upon by Mr. Andhyarujina were neither produced nor tendered nor got marked as Exhibits. Were they produced Respondents would have had an opportunity to cross examine the witnesses and show that the averments in the documents were not correct and/or to explain how and why lease was taken by the Secretary of the State. It is clear that the averments in para 4(b) of the Plaint were not pressed. That they were not pressed is also clear from the Judgment of the Trial Court. It sets out all the arguments of the parties. No submission on the question of ownership of land by the Plaintiff and/or that the land was not on old grant terms has been recorded. If it was argued and their submissions were not recorded cross objections should have been filed particularly when in the last paragraph the Trial Court clarifies that the Government could resume the land after following due procedure of law. There could be no question of resumption if it was being disputed that the Government was the owner of the land. If Mr. Andhyarujina is right and the parties had not given up this contention, then it would be worse for the Appellants inasmuch as it would then mean that the trial Court had not accepted Plaintiffs/Appellants claim to ownership of land and had negatived it.

34. The Appellants never went in Appeal against the Judgment of the Trial Court. Even when the Respondents went in Appeal no cross objections were filed. Even before the first Appellate Court it has not been stated that their submissions were not dealt with and/or that the portion of the Judgment permitting resumption, after due process of law, could not have been granted. On the contrary the first Appellate Court is also clarifying that the Government can resume after following due process of law. This shows that even before the first Appellate Court it was an admitted position that the Government was the owner of the land and that the land was on old grant terms.

35. When the Respondents went in Second Appeal before the High Court, at this stage also, no cross objections were filed. Before the High Court it was not disputed that the land was on old grant terms. The High Court has so recorded in its Judgment. It is settled law that one has to proceed on basis of what has been recorded by the Court. If any party feels aggrieved of what has been recorded by the Courts a

clarification has to be sought from that same Court. In this case the clarification was sought, by way of Review Petition, to which as stated above, fresh documents were purported to be attached for the first time. The High Court has rejected the Review Petition. The High Court has thus confirmed that at the time the Second Appeal was argued it was not disputed that the land was on old grant terms. This Court has to go by what has been recorded in the Judgment. What is recorded in the Judgment is supported by the conduct of the parties inasmuch as no evidence was led to dispute the fact, no documents were tendered or marked as Exhibits and no submissions were made on this aspect. That it was not disputed that the land was on old grant terms is also supported by what has been recorded in the Judgments of the trial court and the First Appellate Court. There is no evidence that the written admissions were taken forcibly and/or that they were not binding or not correct. Admissions are relevant evidence if not explained away. Thus these cases have been fought over the last 17 years on an admitted position. Mr. Rohtagi is right that it would be a travesty of justice and would amount to permitting parties to misuse laws delays if at this stage they are permitted to change their stand and take contentions which are contrary to what has been the admitted position all these years.

36. In Civil Appeals (arising out of SLP (C) Nos. 22436-22437 of 1997) all the Courts below have given concurrent findings of fact. We see no infirmity in these findings. The findings of fact are based on evidence before the Trial Court and require no interference.

37. Once it is admitted that land was on old grant terms it is irrelevant to argue that it is not shown that Ambala was under the Bengal Army. The same would be the position when on evidence Court has held that land is on old grant terms."

(iv) Jilubhai Nanbhai Khachar and others vs. State of Gujarat and another, reported in 1995 Supp. (1) SCC 596 :

"32. In Subodh Copal's case Patanjali Sastri, CJ, held that the word 'deprived' in clause (1) of Art. 31 cannot be narrowly construed. No cut and dry test can be formulated as to whether in a given case the owner is deprived of his property within the meaning of Art. 31; each case must be

decided as it arises on its own facts. Broadly speaking it may be said that an abridgement would be so substantial as to amount to a deprivation within the meaning of Art. 31, if, in effect, if withheld the property from the posession and enjoyment by him or materially reduced its value. S.R. Das, J, as he then was, held that Clauses (1) and (2) of Art, 31 dealt with the topic of 'eminent domain', the expressions 'taken possession of or 'acquired' according to Clause (2) have the same meaning which the word 'deprived' used in clause (1). In other words, both the clauses are con- cerned with the deprivation of the property; taking possession of or ac- quired, used in Clause (2) is referable to deprivation of the property in Clause (1). Taking possession or acquisition should be in the connotation of the acquisition or requisition of the property for public purpose. Deprivation specifically referable to acquisition or requisition and not for any and every kind of deprivation. In Dwarka Das Srinivas of Bombay v. Sholapur Spinning and Weaving Co. Ltd., [1954] SCR 674, Mahajan, J., as he then was, similarly held that the word 'deprived' in clause (1) of Art. 31 and acquisition and taking possession in clause (2) have the same meaning delimting the field of eminent domain, namely, compulsory acquisition of the property and given protection to private owners against the State action. S.R. Das, J. reiterated his view laid in Subodh Gupal's case. Vivian Bose, J. held that the word 'taken possession of or 'acquired' in Art. 31(2) have to be read along with the word 'deprived' in clause (1). Taking possession or acquisition amounts to deprivation within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. The word "law" used in Art. 300A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order. Deprivation of property is by acquisition or requisition or taking possession of for a public purpose.

33. It is true as contended by Sri Javery that clause (2) of Art. 31 was not suitably incorporated in Art. 300A but the obligation to pay compen-sation to the deprived owner of his property was enjoined as an inherent incident of acquisition under law is equally untenable for the following reasons. Ramanatha Aiyar's 'The Law Lexicon' Reprint Edition 1987, p. 385, defined 'eminent demain' thus:

"The right of the State or the sovereign to its or his own property is absolute while that of the subject or citizen to his property is only paramount. The citizen holds his property subject always to the right of the soverign to take it for a public purpose. This right is called "eminent domain".

At p. 386 it was further stated that:

"The sovereign power vested in the State to take private property for the public use, providing first a just compensation therefore. A superior right to apply private property to public use. A superior right inherent in society, and exercised by the sovereign power, or upon delegation from it, whereby the subject matter of rights of property may be taken from the owner and appropriated for the general welfare. The right belonging to the society or to the sovereign, of disposing in cases of necessity, and for the public safety, of all the wealth contained in the state is called eminent domain. The right of every government to appropriate, otherwise than by taxation and its police authority, private property for public use. The ultimate right of sovereign power to appropriate not only the public property but the private property of all citizens within the territorial sovereignty, to public purpose. Eminent domain is in the nature of a compulsory purchase of the property of the citizen for the purpose of applying to the public use."

In 'Black's Law Dictionary' 6th edition, at p. 523 'eminent domain' is defined as:

> "The power to take private property for public use by the state, municipalities and private persons or corporations authoritised to exercise functions of public character. in United States the power of eminent domain is founded in both the Federal (Fifth Amendment) and State Constitutions. The Constitution gives the power to take for public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as 'condemnation' or 'expropriation'."

36. In Bisambhar Dayal Chandra Mohan v. State of U.P., this Court had held that the State Govt. cannot while

taking recourse to the executive power of the State under Art. 162, deprive a person of his property. Such power can be exercised, only by authority of law and not by a mere executive fiat or order. It is, therefore, necessarily subject to Art. 300A. Eminent domain, therefore, is a right inherent in every sovereign State to expropriate private property for public purpose without its owner's consent which inheres in Art. 300A and it would be exercised by the authority of law and not by executive fiat or order."

(v) Union of India and others vs. Harish Chand Anand (Dead) Through Lrs., reported in (2010) 15 SCC 591 :

"12. We have carefully considered the contention. We are not persuaded to accept this contention raised by the appellant. As noted earlier the High Court accepted the contention raised by the respondent relying on the Division Bench decision in Bhagwati Devi. Subsequently, the Himachal Pradesh High Court took the same views as the Allahabad High Court, in Durga Dass Sud v. Union of India. We are of the view that the decision of the Delhi High Court in Raj Singh vs. Union of India is acceptable. Therein in para 4 the learned Single Judge held that the determination of compensation was not a condition precedent to the resumption. The Division Bench concurred with the view taken by the learned Single Judge. The Division Bench in para 21 of the judgment in Raj Singh case observed:

"The question of compensation would have to be considered in an independent proceeding between the ex grantee and the Government in the light of the provisions of the first condition of Regulation 6 and the whole of Regulation 7 of Order 179 of 1836."

The question whether the Government must pay compensation or whether they can take the stand that the grantee may remove the structure and the quantum of compensation payable would be considered in that proceeding."

14. It is contended by the learned counsel for the respondent that in both the cases aforementioned this Court referred to and relied on the decision in this very case (Union of India v. Harish Chand Anand) and that the decision having been set aside and the appeal restored to file, they have no precedential value. We cannot agree. Apart from relying on

> the decision in this case which was subsequently set aside, the learned Judges also approved the view taken by the Delhi High Court in Raj Singh case. In any case, we are also of the view that the process of resumption of land in terms of Clause (5) of the grant does not get indefinitely postponed till the dispute as to compensation is determined according to law. In other words the determination of compensation after hearing the affected parties, though mandatory, is not a condition precedent for the exercise of power of resumption. The resultant position that emerges is that the question formulated earlier has to be answered in the negative and the writ petition is liable to be dismissed."

18. Mr.R.Thiagarajan, learned Senior Counsel appearing for the respondent/CMRL, would argue that viewing the importance of the project to ease out congestion in the city of Chennai and following the policy of the Central Government to go ahead with the project in coordination with the State, CMRL being the requisitioning body, resumption of the subject land is a *sine qua non* and any delay in handing over possession of the land would not only cause monetary loss but lead to the stalling of the project and, therefore, the land is required for a public purpose and there is every need for handing over the land at the earliest, in order to facilitate the project. It is his further contention that public purpose will prevail over the individual's interest and the appellants have exhausted all the remedies and the matter has been remanded by the Supreme Court only for a limited purpose to give the appellants an opportunity, which has been followed and any delay in completing the project would result in heavy financial implications and, as such, CMRL, being the requisitioning body, its interests should be protected. The learned Senior

Counsel has relied on the following rulings :

(i) Gaya Prasad vs. Secretary of State, reported in AIR 1939 Allahabad 263 :

> "... No limit of time applies to Government in its resumption of a grant. In the present case, the suit has been brought for resumption and there is no reason whatever why it should not be granted. It may be noted that the grant has been violated by the transfer by sale of 22nd July 1928 and any sanction of the Municipal Board would not make that transfer valid. Secondly, the grant was violated by the appellant digging foundations with the intention of making a building. The grant is not for the purpose of making a building but for the purpose of planting a garden or grove. Thirdly, the grant was violated by Gaya Prasad, the present occupant, setting up title in himself which was in issue before the Assistant Collector and was the subject of a reference to the Munsif and was again the subject of a claim apparently before the lower Appellate Court where the appellant claimed to have heritable and transferable rights. As regards the power of Municipal Boards, the quotation of the Court below from the Municipal Manual, p.261, shows that "Nazul is at all times liable to resumption by the Government." Therefore, no matter what action is taken by the Municipal Board, the power of Government to resume the nazul remains. For these reasons, we consider that the Court below was correct in decreeing this suit for resumption and we dismiss this second appeal with costs."

(ii) Collector of Bombay vs. Nusserwanji Rattanji Mistri and others, reported in AIR 1955 Supreme Court 298 :

> "15. Then there remains the question whether the sale deed, Exhibit A, imposes any limitation on the right of the Crown to assess the lands. The deed conveys the lands to the purchasers absolutely "with all rights, easements and appurtenances whatsoever" to be held "for ever". It does not, however, recite that they are to be held revenue-free. But it is argued for the respondents that where there is an absolute sale by the Crown as here, that necessarily imports that the land is conveyed revenue-free; and section 3 of the Crown Grants Act No. XV of

1895 and certain observations in Dadoba v. Collector of Bombay(1) were relied on as supporting this contention. Section 3 of Act No. XV of 1895 is as follows:

> "All provisions restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor any rule of law, statute or enactment of the Legislature to the contrary notwithstanding".

The contention is that as the grant is of a freehold estate without any reservation it must, to take effect according to its tenor, be construed as granting exemption from assessment to revenue. But that will be extending the bounds of section 3 beyond its contents. The object of the Act as declared in the preamble is to remove certain doubts "as to the extent and operation of the Transfer of Property Act, 1882, and, as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority". Section 2 enacts that the provisions of the Transfer of Property Act do not apply to Crown grants. Then follows section 3 with a positive declaration that "all provisions, restrictions, conditions and limitations over" shall take effect according to their tenor. Reading the enactment as a whole, the scope of section 3 is that it saves "provisions, restrictions, conditions and limitations over" which would be bad under the provisions of the Transfer of Property Act, such as conditions in restraint of alienations or enjoyment repugnant to the nature of the estate, limitations offending the rule against perpetuities and the like. But no question arises here as to the validity of any provision, restriction, condition, or limitation over, contained in Exhibit A on the ground that it is in contravention of any of the provisions of the Transfer of Property Act, and there is accordingly nothing on which section 3 could take effect.

16. It is argued by the learned Attorney-General that this limitation on the scope of the Act applies in terms only to section 2, and that section 3 goes much further, and is general and unqualified in its operation. The scope of section 3 came up for consideration before the Privy

Council in Thakur Jagannath Baksh Singh v. The United Provinces(1). After setting out that section, Lord Wright observed:

> "These general words cannot be read in their apparent generality. The whole Act was intended to settle doubts which had arisen as to the effect of the Transfer of Property Act, 1882, and must be read with reference to the general context....."

In this view, section 3 must also be construed in the light of the preamble, and so construed, it cannot, for the reasons already given, have any bearing on the rights of the parties. Moreover, that section only enacts that "all provisions, restrictions, conditions and limitations over" shall take effect according to their tenor, and what is relied on is not any provision, restriction, condition or limitation over, in Exhibit A which according to its tenor entitles the respondents to hold the lands rent-free, but the absolute character of the interest conveyed under Exhibit A. Therefore, section 3 does not in terms apply."

(iii) Fruit & Vegetable Merchants Union, Subzi, Mandi, Delhi vs. Delhi Improvement Trust, Regal Buildings, Cannaught Place, New Delhi, reported in AIR 1957 SC 344 :

> "19. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, s. 56 of the Provincial Insolvency Act (V of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that " such property shall thereupon vest in the receiver." The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, ss. 16 and 17 of the Land Acquisition Act. (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest"

absolutely in the Government free from all encumbrances'. In the cases contemplated by ss. 16 and 17 the property acquired becomes. the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the autho- rity in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly ss. 45 to 49 and 54 and 54A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them.

20. The question of the ownership of the structure built upon Government land by the Trust may be looked at from another point of view. We have already held that the Trust was in the position of a statutory agent of Government and had erected the structure with money belonging to Government but advanced at interest to the Trust. In such a situation the structure also would be the property of Government, though for the time being it may be at the disposal of the Trust for the purpose of managing it efficiently as a statutory body. Simply because the Trust erected the structure in question and later on paid up the amount advanced by Government for the purpose would not necessarily lead to the,legal inference that the structure was the property of the Trust. In this connection reference may be made to the decision of this Court in Bhatia Co-operative Housing Society Ltd. v. D. C. Patel(1). The case is not on all fours with the facts of the present case. But the following observations of Das J. (as he then was) at p. 195 of the report are pertinent:-

> " It is true that the lessee erected the building at his own cost but he did so for the lessor and on the lessor's land on agreed terms. The fact that the lessee incurred expenses in putting up the building is precisely the consideration for the lessor granting him a lease, for 999 years not only of the building but of the

> land as well at what may, for all we know, be a cheap rent which the lessor may not have otherwise agreed to do. By the agreement the building became the property of the lessor and the lessor demised the land and the building which, in the circumstances, in law and in fact belonged to the lessor. The law. of fixtures under s. 108 of the Transfer of Property Act may be different from the English law, but s. 108 is subject to any agreement that the parties may choose to make. Here, by the agreement the building became part of the land and the property of the lessor and the lessee took a lease on that footing."

(iv) The Director of Rationing and Distribution vs. The Corporation of Calcutta, reported in AIR 1960 Supreme Court 1355 :

> "38.... There is nothing in the Act of 1923 or in the Act of 1951 exempting the State specifically from any of the provisions of the Calcutta Municipal Act. In this case the State is being prosecuted under s. 488 (or s. 537 now) and that section provides for fine for breach of s. 386 (or s. 437 now). The provision is a penal provision' and immediately a question arises whether the State as such, apart from its individual officers as natural persons, is liable to prosecution under the criminal law or has to be exempted from the operation of the provisions of criminal statutes by necessary implication. A criminal proceeding generally ends with punishment which may be imprisonment, or fine, or both. Now it does not require any elaborate reason to realise that the State as such cannot be sentenced to imprisonment because there is no way of keeping it in prison; therefore, by necessary implication, the State is exempt from all penal statutes and provisions providing for sentences of imprisonment or death. Then come those penal provisions which impose fines, like the present case, and the question is whether in such a case also the State must be deemed by necessary implication to be exempt from the penal provision. Generally speaking fines when inflicted by courts are realised by the State and go to the coffers of the State. In effect, therefore if the State as such is to be prosecuted under a penal statute imposing fine the result is that the Court will sentence the State to fine which will go to the State itself. It is obvious that if such is the result of a prosecution, namely

that the accused gets the fine, the intention could never be that such a prosecution should be launched. Therefore where the penalty is fine and the fine goes to the State, it must be held that by necessary implication the law does not intend the State to be prosecuted for such an offence. In the present case I find that under s. 81 of the Act of 1923 (or the corresponding s. 115 of the Act of 1951) the fines imposed by the Magistrate will not go to the Corporation but in the usual way to the State. Under the circumstances whatever other methods may be possible for enforcing the provisions of s. 386 (or s. 437 now) against the State it cannot be intended to be enforced by prosecution resulting in fine which would go to the State itself. In these circumstances it must be held that by necessary implication the State is exempt from the penal provisions contained in s. 488 (now s. 537). I would therefore allow the appeal, set aside the judgment of the High Court and restore the order of acquittal by the Magistrate."

(v) State of Orissa vs. Ram Chandra Dev and another, reported in AIR 1964 Supreme Court 685 :

"(4) When these petitions were argued before the High Court, the High Court took the view that it was impossible for it to decide the important question of title in writ proceedings under Art. 226. It expressed the opinion, and we think rightly, that such a question of title can be decided only in a properly constituted suit where both parties would get sufficient opportunity to adduce all material evidence bearing on the question in dispute. Having reached this conclusion, the High Court proceeded to examine the narrow question as to whether the ex-Zamindars should be maintained in their possession of the Maliahs until eviction in due course of law, or whether they should be driven to the civil court to establish their right after Government has successfully evicted them by use of force or show of force. In dealing with the petitions on this narrow ground the High Court recognised that the existence of a right is the very foundation of the exercise of its jurisdiction under Art. 226 and it thought that possession of the lands for more than 80 years with the ex-Zamindars afforded evidence of a right which could sustain their petitions under Art. 226. It was urged before the High Court that S. 9 of the Specific Relief Act which affords a speedy and summary remedy to a person

in possession who has been dispossessed is not applicable where dispossession of a person in possession is caused by the Central Government or any State Government, for that is the effect of the clear provision in that behalf under S. 9 itself. The High Court, however, was inclined to take the view that the right to recover possession vesting in a person who had been in possession prior to such dispossession which is implicit in S. 9 can be enforced under Art. 226 by a party even against the Central Government or the State Government, and in that sense, the jurisdiction of the High Court under Art. 226 was not limited in the manner in which the jurisdiction of civil courts is limited under S. 9. The High Court then expressed itself somewhat strongly against the intention of the appellant to recover possession from the ex-Zamindars merely be resuming the grants without taking recourse to a court of law and so, it held that the ex-Zamindars who had moved it under Art. 226 were entitled to an appropriate writ under the said Article. The appellant then moved the High Court for a certificate and it is with the certificate issued by the High Court that it has come to this Court in the present two appeals.

11. As we have already observed, the High Court did not embark upon the enquiry as to title in the present proceedings, because that is a question which may be appropriately tried in a regular suit. In proceeding to issue a writ in favour of the respondents, the High Court, however, appears to have assumed that the appellant was not entitled to seek to recover possession of the properties after resuming the grants in question. Whether or not the grants in question are resumable, and if they are, whether or not the appellant can recover possession without filing a suit, are questions on which we propose to express no opinion in the present appeals. Ordinarily, where property has been granted by the State on conditions which make the grant resumable, after resumption it is the grantee who moves the Court for appropriate relief, and that proceeds on the basis that the grantor State which has reserved to itself the right to resume may, after exercising its right, seek to recover possession of the property without filing a suit. But apart from this aspect of the matter, it is difficult to see how the High Court was justified in issuing the writ in the present appeals the inevitable consequence of which would be that the respondents would remain in possession of the property until

the appellant files a suit against them; and that, in our opinion, would not be justified unless questions of title are determined and it is held that the appellant must file a suit before the respondents can be dispossessed. It appears that in issuing the writ in favour of the respondents, the High Court failed to appreciate the legal effect of its conclusion that questions of title cannot be tried in writ proceedings. Once it is held that the question of title cannot be determined, it follows that no right can be postulated in favour of the respondents on the basis of which a writ can be issued in their favour under Article 226.

12. Mr. Tatachari, however, has contended that the right on which the petitions of the respondents are founded is a right flowing from the respondents' continuous possession of the properties for many years, and he argues that if such a right is proved, the High Court would be justified in issuing a writ protecting that right. This argument is clearly fallacious. Mere possession of the property for however long a period it may be, will not clothe the possessor with any legal right if it is shown that the possession is under a grant from the State which is resumable. Such long possession may give him a legal right to protect his possession against third parties, but as between the State and the grantee, possession of the grantee under a resumable grant cannot be said to confer any right on the grantee which would justify a claim for a writ under Article 226 where the grant has been resumed. In dealing with this argument, we have assumed without deciding that though a suit under Section 9 of the Specific Relief Act would have been incompetent against the appellant, a similar relief can be claimed by the respondents against the appellant under Article 226. Even on that assumption, no right can be claimed by the respondents merely on the ground of their possession, unless their right to remain in possession is established against the appellant, and this can be done if the grant is held to be not resumable."

(vi) State of Andhra vs. Gathala Abhishekam and others, reported in AIR 1964 Andhra Pradesh 450 :

"24. It is profitable to refer to the Government Grants Act, XV of 1895 in this connection. That Act was enacted to remove certain doubts which had arisen as to the extent and operation of the Transfer of Property Act and as to the power

of the Government to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority. Section 2 of the said Act categorically states that nothing in the Transfer of Property Act contained shall apply or be deemed ever to have applied to any grant or transfer of land or of interest therein and made by or on behalf of the Government to or in favour of any person whosoever, but every grant and transfer shall be construed and take effect as if the said Act had not been passed. Section 3 enjoins that all provisions, restrictions, conditions and limitations ever contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor any rule of law, statutes or enactment of the Legislature to the contrary notwithstanding. It is thus evident that the ordinary rule applicable to a grant made by a subject does not apply to a grant made by the sovereign authority, and the giants made by the sovereign are to be construed most favourably for the sovereign. It is capable of important relaxations in favour of the subject. If the intention is obvious, a fair and liberal interpretation must be given to the grant to enable it to take effect; and the operative part, if plainly expressed, may take effect notwithstanding qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the sovereign; and where two constructions are possible, one valid and the other void, that which is valid ought to be preferred, for the honour of the sovereign's profit.

According to the said Act however the Crown has unfettered discretion to impose any condition, limitation, or restriction in its grants. It is not only the Transfer of Property Act that is affected by the Crown Grants Act. Section 3 of the Government Grants Act declares the unfettered discretion of the Crown to impose such conditions and limitations as it thinks fit, no matter what the general law of the land is. The effect of Section 3 therefore is that when a grant has been made by the Crown, the Crown is not with reference to that grant, bound by any of the sections of either the Tenancy Act or the Transfer of Property Act or the Contract Act, or any other law for the time being in force. It therefore follows that any grant made has to be construed in accordance with the tenor of the grant, and the grant will certainly be regulated in accordance with such tenor. This is

the conclusion which is 'supported by the following decisions.

(a) Ullattuthodi Choyi v. Secy, of State for India, 14 Mad LW 386 at p. 387 : (AIR 1921 Mad 409).

(b) Kallingal Moosa Kutti v. Secy, of Stale, ILR 43 Mad 65 at p. 68 : (AIR 1920 Mad 413 at p. 414).

(c) Janendra Nath v. Jadu Nath, AIR 1938 CaJ 211 at p. 214;

(d) Raja Rajinder Chand v. Sukhi, .

(e) Namdeo Lokman v. Narmadabai, .

(f) Haji Fasihuddin v. Mohd. Habib, .

Applying these principles to the facts of the present case we experience no difficulty in reaching the conclusion that the tenor of the grant clearly indicates that the land was assigned on condition that the plaintiffs should pay the fond revenue on the prescribed dates. When they have failed to pay, it follows that the Government has the right to resume and re-enter and take 'possession of the land without paying any compensation. No notice therefore is contemplated under the tenor of the grant. Reference in this regard is specifically made to cited -above. That was a case in which the principal question which arose for decision was whether notice as contemplated by Section 111 (g) of the Transfer of Property Act was necessary for the determination of a lease for non-payment of rent even where such lease was executed before the corning into force of the Transfer of Property Act. Discussing elaborately the law and authorities their Lordships came to the conclusion that no such notice was necessary and that the defaulting lessee cannot claim the benefit of a notice in writing to complete the forfeiture he has incurred, and that the lessor has to simply express an intention that he is going to avail of the forfeiture and that can be done by the filing of the suit, as in English law, in all cases not governed by the Transfer of Property Act.

In this case no notice to determine the grant was necessary. The Government by an overt act can indicate that they are determining the grant and resuming the land and re-entering and taking possession of the land. Admittedly no such suit in such a case is necessary. We have therefore to go

by the words of the assignment made in this behalf. Nothing beyond what is contained in the assignment order is necessary to be looked into. It is also perhaps relevant to refer to . In that case it was held that a tenant of a service tenure who refuses to perform his services is liable to be eject- ed even without a notice to quit. It was found that it was an incident of a service tenure that the holder thereof is liable to ejectment upon refusal to perform service; as this incident would be materially affected, and practically destroyed, if the provisions of Section 155 of the Bengal Tenancy Act relating to relief against forfeiture were made applicable, service tenures must be held to be excepted from the operation of that Section."

(vii) State of Madras, represented by the Collector of Madras vs. T.M.Oosman Haji & Co., Timber Merchants, Basin Bridge Road, Madras & Others, reported in 1969 (1) MLJ 433 :

"14. The learned Government Pleader brought to our notice the unreported decision of Natesan, J., in Mallanna Gounder v. Muthuswami Gounder and Anr. S.A. No. 482 of 1964, where a different view of Section 3 of the Government taken in deciding whether the State can claim immunity and exemption from the provisions of the Madras Cultivating Tenant Protection Act in respect of agricultural lands of the Government by virtue of Section 3 of the Government Grants agricultural Act. In the case before the learned Judge, a lessee of agriculture land government Grants sought to rely upon the provisions of the Madras Cultivating Act land from Govern-section Act and the State met by putting forward a claim to immunity and exemption from the provisions of that Act, by reason of the Government Grants Act. The learned Judge held, firstly, that the plaintiff's in the suit would be a cultivating tenant within the meaning of the Madras Cultivating tenant the Act should apply, he could not be evicted from his holding. The State was undoubtedly the landlord and but for the claim to immunity by reason of the Government Grants Act, Section 3 of the Madras Cultivating Tenants Protection act would afford protection to the tenant against eviction. The learned Judge examined the provisions of the Government Grants Act. He referred to the decisions already cited by us earlier in this judgment He cited the

observation to the Privy Council in Thakur Jagannath Baksh Singh v. The United Provinces (1946) F.C.R. in : (1946) F.L.J. 88 : L.R. 73 I.A. 123 : (1946) 2 M.L.J. 29 that the generality" and the observations of the Supreme Court in Collector of Bombay v. Nasserwanji . The learned Judge construed the observation that the general words in Section 3 cannot be read in their apparent generality to mean that the scope of Section 3 of that Act was limited. It seems to us that the observations both of the they were made. In the Privy Council decision the validity of the Provinces which Tenancy Act, as enacted by the Provincial Legislature .United Provinces as it affected the rights conferred upon a grantee under a Sannad. The contention then was that since under the terms of the grant it was open to sannad. The contention to deal with the land and the tenancy as he liked, the impunged to the sannad- holder far as it interfered with his right to deal with his tenants in any impunged legislation , in so to the terms of the grant. The Judicial Committee pointed out that any way was contrary power could not be attacked and the Statute regulating the relations that the legislative landlord and the tenant, though it might affect or diminish the rights between the landlord possessed earlier, did not in any way run contrary to Section 3 of the Government Grants Act. By making a grant of that description, the legislature did not deprive itself of any power to legislate within the scope of its authority, and the contention that by reason of the sannad, the pre-existing relations between the sannad-holder and his tenants could not be interfered with by legislation of this kind was repelled, and it is in that context. Nor do the observations of the Supreme Court in the next case referred to above lead to a different conclusion. After quoting the passage from the Supreme Court decision, Natesan, J. proceeded to say that "the Government Grants Act thus being unavailable, the State sought to stand on the archaic prerogative and immunity of the Crown from the operation of the statutes..." and proceeded to consider whether under the general law the Crown was not bound by any statute, unless the statute expressly or by clear implication so bound it. We are unable to subscribe to the view taken by our learned brother that the Government Grants Act became 'unavailable' solely by reason of the observations of the Privy Council and the Supreme Court. We have already pointed out that under the law as it stands at present, the

State is bound by any legislation, unless it is expressly or by necessary implication excluded from the operation of that statutes in relation to certain matters covered by that piece of legislation. In effect, the view of Natesan, J., would appear to be that the two decision, that of the Privy Council and of the Supreme Court, have virtually destroyed the basis of the Government Grants Act, and that in so far as transactions dealt with by that Act are concerned, the Government by reason of the provisions contained in that Act cannot claim immunity from the operation of any other statute. We are unable to agree in the view taken by our learned brother that the earlier decisions of this Court in Murugesa Gramani v. Province of Madras (1946) 2 M.L.J. 171, Ullattuthedi Chovi v. Secretary of State for India (1921) 41 M.L.J. 494 and Kallingal Moosa Kutty v. The Secretary of Stale for India (1920) I.L.R. 43 Mad. 65 : 37 M.L.J. 332, may not be good law after the decisions of the Judicial Committee and the Supreme Court cited above. Neither expressly nor by necessary implication does the Government Grants Act either stand repealed or has fallen into obsolescence. We hold that it is open to the State to put forward successfully the contention that the express stipulation found in the terms of the grant, such as that of the lessee should surrender possession after the expiry of the term of demise etc. can take effect, notwithstanding the provisions of the Madras Cultivating Tenants Protection Act. It is also our view that it is not necessary for the Madras City Tenants Protection Act to contain any provision excluding the State from its operation, for such an exclusion from the operation of any particular enactment may be found in a different enactment covering the same field. In so far as the Madras City Tenants Protection Act provides for the control over the eviction of cultivating tenants, though the relevant section excluding its operation in the case of lands belonging to certain specified bodies are concerned does not expressly refer to the exclusion of lands belonging to the State, the Government Grants Act confers that exclusion."

(viii) Maharaj Singh vs. State of Uttar Pradesh and others, reported in (1977) 1 SCC 155 :

"15. In the instant case the Act contemplates taking over of all zamindari rights as part of land reform.

> However, instead of centralising management of all estates at State level, to stimulate local self-government, the Act gives an ena- bling power--not obligatory duty--to make over these estates to Gaon Sabhas which, so long as they are in their hands, will look after them through management committees which will be under the statutory control of Government under s.126. Apart from management, no. power is expressly vested in the Sabhas to dispose of the estates absolutely. The fact that as a body corporate it can own and sell property does not mean that the estates vested in a Sabha can be finally sold away, in the teeth of the provisions striking a contrary note. For, under s.117(6), if, for any reasons of better management or other, the State (Government is but the operational arm of the State and cannot, as contended, be delinked as a separate entity, in this context) the. State thinks fit to amend or cancel the earlier vesting declara- tion or notification, it can totally deprive the Sabha of, and resume from it, any estate. This plenary power to emasculate or extinguish the Sabha's right to the estate is tell-tale. True, this cut-back on the amplitude of the vesting is not an incident of the estate created but is provided for by the Act itself. Even so, we have to envi- sion, in terms of realty law, what are the nature and inci- dents of the interest vested in the Sabha--full ownership divestible under no circumstances or partial estate with the paramount interest still surviving in praesenti in the State ?"

(ix) State of U.P. and another vs. Synthetics and Chemicals Ltd. and another, reported in (1991) 4 SCC 139 :

> **"**38. The dispute is about levy of purchase tax on industrial alcohol. The High Court held that the State legislature was competent to enact a law imposing purchase tax on it in exercise of power under Entry 54 of List II. But it struck down the levy as it would disturb price structure regulated by Central Government. It was held that control of alcohol industry having been taken over by the Parliament, for purpose of regulation and development the State stood denud- ed of its taxing power under Entry 54 of List II to the extent the field of price fixation was covered by the price control order issued by the Government. And the purchase price being

component of price fixation which squarely fell within the power of Central Government the imposition of purchase tax amounted to intrusion into the forbidden area of price fixation by Central Government. Support for this was drawn, principally, from the two Constitution Bench decision in Indian Cement Ltd. v. State of Tamil Nadu, [1990] 1 SCC 12 and Synthetic and Chemicals v. State of U.P., [1990] 1 SCC 1091. The first was relied for the prin- ciple that even a taxing legislation by the State could be invalid to the extent it trenched on Central legislation on the same subject. And the latter for the conclusion that, 'however, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders sales tax cannot be charged by the State on industrial alcohol'. Reliance on Indian Cement Ltd. (supra) was under complete misapprehension. The State in that case attempted to levy cess on royalty. It was held to be in- valid. To save it the State attempted to justify it as a tax in exercise of power under Entry 50 of List II. The submission was negatived as the legislative power of State under Entry 50 of List II was 'subject to any limitation imposed by the Parliament by law relating to mineral development'. The Bench held that in view of the Parliamentary legislation under Entry 54 of List 'I and the declaration made under Section 2 and provisions of Section 9 of the Act the State legislation was overridden to that extent. No such restriction or limitation is placed under Entry 54 of List II except that the exercise of power has been made subject to the provisions of Entry 92 of List I. ”

(x) Commissioner of Income Tax vs. Sun Engineering Works (P) Ltd.), reported in (1992) 4 SCC 363 :

“39.... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while

applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. v. Union of India this Court cautioned:

> "It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment. ..."

(xi) Committee of Management of Pachaiyappa's Trust vs. Official Trustee of Madras and another, reported in (1994) 1 SCC 475 :

> "31. The learned Single Judge was also not right in holding that the appellant has no locus standi in the matter. Apart from being a tenant on the ground floor of the building adjacent to the vacant plot of land the appellant trust, is also the residuary legatee under the will and has a beneficial interest in the trust property sought to be leased. The appellant was, therefore, entitled to raise objections regarding grant of lease in favour of Respondent 2 on the ground that the said lease was not in the interest of the trust property and the said objections could not be brushed aside on the view that the appellant had no locus standi."

(xii) The Government Grants Act, 1895 :

> "Statement of Objects and Reasons **:** The Transfer of Property Act, 1882, Sections 10-12 invalidate with certain exceptions all conditions for the forfeiture of the transferred property on alienation by the transferree and all limitations over consequent upon any such alienation or any insolvency of or attempted alienation by him. The Crown is not specifically mentioned in the Act, and it may be assumed that it was not designed to impose fetters of this description upon the discretion of the Crown, especially as to the creation of inalienable jahgirs in grants made for public services; but it has been thought better to set the question at rest by express legislation.
>
> Upon a late occasion the Government of India were

advised that it is not competent for the Crown to create an inalienable and impartible estate in the land comprised in any Crown grant, unless such land has heretofore descended by custom as an impartible Raj. The second sub-section of the Bill is intended to obviate this inconvenience by providing that all Crown grants are to be construed according to their tenor, notwithstanding any rule of law which might otherwise affect their operation."

1. Title and extent : (1) This Act may be called The [Government] Grants Act, 1895.

(2) It extends to the whole of India except [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]."

3. Government grants to take effect according to their tenor:

All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding. "

(xiii) Anamallai Club vs. Government of Tamil Nadu and others, reported in (1997) 3 SCC 169 :

"8. Law makes a distinction between persons in juridical possession and rank trespassers. Law respects possession even if there is no valid title to support it. Law does not permit any person to take law into his hands and to dispossess a person in actual possession without having recourse to a court. The object thereby is to encourage compliance of the rule of law and to deprive the person who wanted, a person in lawful possession to have his removed from possession, according to proper from and to prevent them from going with a high band and eject such person. Undoubtedly, the true owner is entitled to retain possession even though he had obtain it by force or by other unlawful means but that would not be a ground to permit the owner to take law into his own hands and eject the person in juridical possession or settled possession without recourse to law.

9. Thus, it could be seen that even after

determination of the licence under the Government Grants Act, the Government is entitled resume possession but resumption of possession does not mean unilaterally taking the possession without recourse to law. The Eviction Act contemplates such a procedure. "Premises" defined under Section 3(d) of the Act means and land or any building or a part of a building or but and enclosed etc. Section 4 prescribes procedure of issuance of a notice of show cause before eviction giving an opportunity and thereafter taking action under Section 5 of the Act. Unfortunately, on the facts of the case on hand, the respondent, has not adopted the procedure prescribed under Sections 4 and 5 of the Eviction Act after determination of the licence granted under the Government Grants Act. The High Court, therefore, was not right in its conclusion that the procedure prescribed under PPE Act is not applicable to the grants made under the Government Grants Act since the appellants remained in settled possession since a long time pursuant to the grant. After determination of the grant, though they have no right to remain in possession, the State cannot take unilateral possession without taking recourse to the procedure, provided under the Act. It is, therefore, clear that it would have been open to the respondent to have a notice issued to the appellant and give time to vacate the premises within 10 days or 15 days and, therefore, could leave resumed possession with minimal use of police force. We cannot give and direction in this case since possession was already resumed. We have directed not to create third party right in the property. We are not inclined to interfere with the order.

10. Shri Sorabjee contended that the appellant is entitled to notice before the order of termination of grant made and so the action is bad in law and so the appellant is entitled to restitution of the property. We are not inclined to agree with him. The recourse to Article 226 of the Constitution, to establish title would not be proper remedy. In this case, we are not inclined to go into the question for the reason that the High Court has held that the writ petition is not maintainable. After termination of the licence by the Government under the Government Grants Act, the Estate Officer appointed under Section 3 cannot go into its correctness and adjudicate in the proceedings under Section 3 thereof. In our view, the Division Bench of the High Court is right in its finding. The Government

having determined the licence, the Estate Officer cannot go into the question of legality of the termination of the licence under the Crown (Government) Grants Act to take further steps under Section 4 and 5 of the Act. In that view of the situation in this case, we think that it is not necessary for the State Government to nominate the Estate Officer and for the Estate Officer to give notice under Sections 4 and 5. There is not need for State to file a suit for eviction. But notice in compliance of principles of natural justice should have been given giving reasonable time of 10 or 15 days to vacate the premises and to deliver vacant and peaceful possession; thereafter, the Government would be free to resume possession. Since possession was already taken, through we are not approving of the manner in which the same was taken, we do not think that in this matter notice afresh need be given to the appellant. It may be open to the appellant to avail of any remedy available in law."

(xiv) Hajee S.V.M. Mohamed Jamaludeen Bros. & Co. vs. Government of Tamil Nadu, reported in (1997) 3 SCC 466 :

"7. When a Letters Patent Appeal was preferred b the Government a division bench of the Madras High Court set aside the side decree and dismissed the suit holding that clause 7 of the agreement is valid and enforceable in view of the provisions in the grants act and hence appellant is not entitled to claim damages for the action resorted to by a government.

8. If clause 7 of the agreement is valid it is binding on both the parties to the contract and the corollary is that government had the power to revoke it unilaterally and hence termination of the contract is not liable to be questioned by the other party. As the division bench upheld the validity of clause 7 only on account of its protection as per the Grants Act we are mainly called upon to decide whether the impugned clause in the agreement has the said protection.

9. Section 2 of the Grants Act insulates all grants and all transfers of land or any interest therein made by the government from the checks of the provisions of Transfer of Property Act. Section 3 of the Grants act protects the

terms of such grant from the provisions of any other law. we extract the above two provision hereunder:

> "2. "Transfer of Property Act, 1882, not to apply to Government grants. - Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed."
>
> 3- "Government grants to take effect according to their tenor:- All provisions, restrictions, conditions and limitations, contained in any such grant or transfer as aforesaid shall be valid and the effect according to their tenor any rule of law, statute or enactment of the contrary notwithstanding."

10. The combined effect of the above two sections of the Grants Act is that terms of any grant of terms of any transfer of land made by a government would stand insulted from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained n any enacted law or even the equitable principles of justice equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The to provisions are so framed as to confer unfettered discretion on the government to enforce any condition or limitation or restriction in all types of grants made by the government to any person. In other words, the rights, privileges and obligations of any grantee of the government would be completely regulated by the terms of the grant, even if such terms are inconsistent with the provisions of any other law.

11. The above legal position was recognised by the courts in India before the Constitution of India came into being. (Surja Kanta Roy Choudhury and others vs. Secretary of State, Air 1938 cal. 229, and Raza Husain Khan & ors. vs. Sayid Mohd. & ors. , AIR 1938 Oudh 178). The position continued to be so even after the Constitution came into force [State of U.P. vs. Zahoor Ahmad, 1974 (1) SCR 344].

12. An attempt was made to show that the transaction evidenced by the agreement was not a grant but a lease of land. Though it is not now open to the appellant to raise such contention (in view of the clear finding of the learned single judge that it was not a lease but only a licence coupled with interest, which finding was not challenged by the appellant before the division bench) assuming the it was lease of land still appellant cannot succeed because lease made by the government is also covered by the protection envisaged in Section 2 and 3 of the Act."

(xv) Suganthi Suresh Kumar vs. Jagdeeshan, reported in (2002) 2 SCC 420 :

"11. When this Court pronounced in Hari Singh v. Sukhbir Singh, (supra) that a court may enforce an order to pay compensation "by imposing a sentence in default" it is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by larger Bench of this court. Hence learned single judge of High Court of Kerala has committed an impropriety by expressing that the said legal direction of this Court should not be followed by the subordinate courts in Kerala. We express our disapproval of the course adopted by the said judge in Rajendran v. Jose, (2001) 3 Kerala Law Times 431. It is unfortunate that when the Sessions judge has correctly done a course in accordance with the discipline the Single judge of the High Court has incorrectly reversed it."

(xvi) Union of India and others vs. Kannadapara Sanghatanegala Okkuta & Kannadigara and others, reported in (2002) 10 SCC 226 :

"5. We do not find any basis for the High Court coming to the conclusion that the decision of the Union Cabinet was vitiated on account of legal malafides. Merely because an administrative decision has been taken to locate the headquarters at Bangalore, which decision is subsequently altered by the same authority, namely, the Union Cabinet, cannot lead one to the conclusion that there has been legal mala fides. Why the headquarters should be at Hubli and not at Bangalore, is not for the court to decide. There are

various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is a political one, it cannot possibly give rise to a challenge on the ground of legal mala fides. A political decision, if taken by a competent authority in accordance with law, cannot per se be regarded as mala fide. In any case, there is nothing on the record to show that the present decision was motivated by political consideration. The observation of the High Court that there has been a change in the decision because there was a change of the Government and a different political party had come into power, is not supported by any basis. That the court will not interfere in questions of policy decision is clearly brought out by the following passage from a decision of this Court in Delhi Science Forum v. Union of India. ..."

(xvii) Sharda Devi vs. State of Bihar and another, reported in (2003) 3 SCC 128;

"25. Keeping in view the principles laid down by this Court in Dr. G.H. Grant's case (supra) and analyzing in-depth the provisions of the Act the difference between reference under Section 18 and the one under Section 30 can be summarized and set out as under:-

By reference to locus

Under Section 18(1) a reference can be made by Collector only upon an application in writing having been made by (i) any person interested (ii) who has not accepted the award (iii) making application in writing, to the Collector, requiring a reference by the Collector to the Court (iv) for determination of any one of the four disputes (specified in the provision), and (v) stating the grounds on which objection to the award is taken. For reference under Section 30 no application in writing is required. The prayer may be made orally or in writing or the reference may be made suo motu by the Collector without any one having invited the attention of the Collector for making the reference.

By reference to the disputes referable

Under Section 18(1) there are four types of disputes which can be referred to Civil Court for determination. They are the disputes: (i) as to the measurement of the land, (ii) as to the amount of the compensation, (iii) as to the persons to whom the compensation is payable, or (d) as to

the apportionment of the compensation among the persons interested. Under Section 30 the only disputes which are referable are : (i) any dispute as to the apportionment of the amount of compensation or any part thereof, or (ii) a dispute as to the persons to whom the amount of compensation or any part thereof is payable. A dispute as to the measurement of the land or as to the quantum of compensation or a dispute of a nature not falling within Section 30, can neither be referred by the Collector under Section 30 of the Act nor would the Civil Court acquire jurisdiction to enter into and determine the same.

By reference to nature of power

Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter; whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the Court, and so on are such illustrative factors which may enter into the consideration by the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.

By reference to limitation

Under Section 18 the written application requiring the matter to be referred by the Collector for the determination of the Court shall be filed within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when he made his award or within six weeks of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever

period shall first expire. There is no such limitation prescribed under Section 30 of the Act. The Collector may at any time, not bound by the period of limitation, exercise his power to make the reference. The expression 'the person present or represented' before the Collector at the time when he made his award would include within its meaning a person who shall be deemed to be present or represented before the Collector at the time when the award is made. No one can extend the period of limitation by taking advantage of his own wrong. Though no limitation is provided for making a reference under Section 30 of the Act, needless to say, where no period of limitation for exercise of any statutory power is prescribed the power can nevertheless be exercised only within a reasonable period; what is a reasonable period in a given case shall depend on the facts and circumstances of each case."

(xviii) Federation of Railway Officers Association and others vs. Union of India, reported in (2003) 4 SCC 289 :

"18. Even if we assume that there is force in the material placed by the petitioners that by forming new railway zones efficiency in the railway administration would not enhance, the reasons given by the Government and material placed by them in support of forming new railway zones is no less or even more forceful. Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government, in deciding the matter, could it still be said that this Court should reexamine to interfere with the same. The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschew from considering irrelevant factors and act reasonably within the parameters of the law, courts would keep off the same. Even on the test suggested by Dr. Pal we cannot travel outside this principle to sit in appeal on the decision of the Government.

19. The decision in B.S.Muddappa's case is distinguishable both on principle and on facts from the present case. The question in that case is whether 'park' can be alloted to a trust for setting up of a private nursing home. There is no application of mind by any of the

authorities as to whether setting up a nursing home in place of a 'park' would amount to an improvement as contemplated under the statute with which this court was concerned in that case. In the present case, the problem is entirely different. The question before the Court is whether formation of zones is for efficient administration of Railways. On this aspect we have considered the rival contentions including the material placed before the Government of India and the criteria evolved for formation of the zones. The test whether such formation of zones is for the purpose of efficient administration of Railways have been duly considered by the Government before taking decision while such consideration was lacking in Muddappa's case. Hence, that decision cannot be of any assistance to appellant. We have applied the principles set out in other decisions relied upon by the appellant to the facts of the case in reaching our conclusion in this matter."

(xix) Escorts Farms Ltd. vs. Commissioner, Kumaon Division, Nainital, U.P. And others, reported in (2004) 4 SCC 281 :

"4. The lands were released to the ruler for its development and for making it cultivable within the prescribed period. The terms of the Govt. Grant are contained in letter dated 26.1.1950 of the Deputy Secretary to the Govt. of UP addressed to the Director of Colonization, Lucknow, U.P. Consequent to the release of the lands in favour of the ruler, no formal lease containing the terms and conditions of the Govt. Grant came to be executed between the erstwhile ruler and the Government of U.P. but it is not in dispute that the possession of the lands under the grant was taken on the basis of the proposal of the government, contained in the letter dated 29.8.1950. The rights and liabilities of the parties are governed by the terms of the said Govt. Grant.

20. The Learned Counsel for the Farm contended that the land subjected to ceiling was held by the Company as a Govt. Grantee pursuant to the letter of the Deputy Secretary to the Govt. of U.P. dated 26.1.1950 referred above. The tenure holder of the land, therefore, within the meaning of the Ceiling Act was the Company i.e. the Govt. Grantee and all proceedings initiated by notice to the Farm, submission of statement and declaration by the Farm culminating in the orders passed by the prescribed authority and the appellate

> authority were void and infructuous because the Govt. Grantee, as holder of the land, was not at all a party before the ceiling authority."

(xx) Bajaj Hindustan Limited vs. Sir Shadi Lal Enterprises Limited and another, reported in (2011) 1 SCC 640 :

> **"**The lands were released to the ruler for its development and for making it cultivable within the prescribed period. The terms of the Govt. Grant are contained in letter dated 26.1.1950 of the Deputy Secretary to the Govt. of UP addressed to the Director of Colonization, Lucknow, U.P. Consequent to the release of the lands in favour of the ruler, no formal lease containing the terms and conditions of the Govt. Grant came to be executed between the erstwhile ruler and the Government of U.P. but it is not in dispute that the possession of the lands under the grant was taken on the basis of the proposal of the government, contained in the letter dated 29.8.1950. The rights and liabilities of the parties are governed by the terms of the said Govt. Grant.

(xxi) Pradeep Oil Corporation vs. Municipal Corporation of Delhi and another, reported in (2011) 5 SCC 270 :

> "45. By reason of the agreement in question, the buildings in question do not belong to the Administration. Admittedly, it belongs to the grantee i.e. appellant herein. As discussed hereinbefore, the Oil tanks has been construed as buildings for the purposes of tax. Therefore, Section 119 of the MCD Act would not apply to the building in question. That being the case, the grantee/appellant is liable to pay tax although the ownership of the land may belong to the Administration.
>
> 46. Section 115 of the MCD Act clearly provides that the general tax shall be payable in respect of lands and buildings. Such lands and buildings may be in lawful occupation of the owner. The occupation of the said building may be lawful or unlawful. Even in a case where apartments are constructed on the land belonging to the Government or a statutory body but the occupier of the apartment is liable to pay tax. If a person encroaches upon

somebody's lands and constructs buildings thereupon, he would also be liable to pay tax. Once it is held that the grantee were liable to pay tax, the same becomes payable from the date of accrual of the liability. The said position is also fortified from specific stipulation in the agreement that the liability to pay all taxes including municipal taxes is on the grantee.

47. The learned counsel for the appellant has placed strong reliance on the decision of this Court in HUDCO v. MCD; (2001) 1 SCC 455 to contend that land belonging to the government is immune from the payment of property tax by virtue of section 119(1) of the DMC Act and Article 285 of the Constitution of India. In the HUDCOs case vacant land of the government, prior to execution of the lease deed in favour of HUDCO, was sought to be taxed and that no building had been constructed by HUDCO. HUDCOs own case was that interest in land could pass only on execution of lease and construction thereon under section 120(2) of the MCD Act. MCD had invoked Section 120(1) DMC Act to fasten liability on HUDCO and not under Section 120(2) DMC Act after construction was made by HUDCO and lease deed executed bythe government. In that case, this Court has held that vacant land belonging to the Government was not taxable by virtue of section 119 DMC Act and Article 285 of the Constitution of India. However, in our considered view, the case at hand is totally different. The HUDCO judgment dealt with the case where vacant land belonging to the lessor/Government and in regard whereto no lease deed had been executed and no construction had been made by the lessee/HUDCO. The land belonging to the central government was sought to be taxed under Section 120(1) of the DMC Act which fastens liability on the lessor. Since land belonged to UOI the same was exempted from payment of tax until the lease deed was executed and construction made thereon by HUDCO-under Section 120(2).

48. Incidence to pay tax under section 120(2) DMC Act is with regard to a composite assessment of land and buildings as section 120(2) talks of a composite assessment only. In the present case vacant land or property of Railways is not sought to be taxed as was in the case of HUDCO Vs. MCD under section 120(1) DMC Act, but property tax/Composite Assessment is sought to be made

on the installations/stotage depots having been constructed by the appellant-by virtue of Section 120(2) DMC Act. It is important to notice that w.e.f. the date of execution of lease deed and construction made thereon by HUDCO, HUDCO has been paying the property tax. HUDCOs case is therefore not applicable."

(xxii) Government of Tamil Nadu vs. Mecca Prime Tannery and others, reported in (2012) 6 MLJ 273 :

"27. The Supreme Court in the case of Fruit & Vegetable Merchants Union vs. Delhi Improvement Trust reported in A.I.R. 1957 S.C. 344, thoroughly discussed the meaning of the word vest while interpreting different provisions of the U.P. Town Improvement Act, 1819. Their lordships first quoted the following passage of the observations made by Lord Cranworth in Richardson vs. Robertson, (1862) 6 L.T. 75 :- 14. ... the word 'vest' is a word, at least of ambiguous import. Prima facie 'vesting ' in possession is the more natural meaning. The expressions 'investiture' - 'clothing' and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the bar, that by long usage ' vesting' ordinarily means the having obtained an absolute and indefeasible right, as contra-distinguished from the not having so obtained it. But it cannot be disputed that the word 'vesting' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession.

Their lordships of the Supreme Court then observed as follows :-

19. That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, s.56 of the Provincial Insolvency Act (V of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that " such property shall thereupon vest in the receiver." The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realizing his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of

the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, ss. 16 and 17 of the Land Acquisition Act. (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall" vest absolutely in the Government free from all encumbrances'. In the cases contemplated by ss.16 and 17 the property acquired becomes. the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly ss.45 to 49 and 54 and 54A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."

(xxiii) Azim Ahmad Kazmi and others vs. State of Uttar Pradesh and another, reported in (2012) 7 SCC 278 :

"27. For taking possession, the State Government is required to follow the law, if any, prescribed. In the absence of any specific law, the State Government may take possession by filing a suit.

28. Under the provisions of the Land Acquisition Act, 1894, if the State Government decides to acquire the property in accordance with the provisions of the said Act, no separate proceedings have to be taken for getting possession of the land. It may even invoke the urgency provisions contained in Section 17 of the said Act and the Collector may take possession of the land immediately after the publication of the notice under Section 9. In such a case, the person in possession of the land acquired would be dispossessed forthwith.

29. However, if the Government proceeds under the terms of the Government Grants Act, 1895 then what procedure is to be followed. Section 3 of the Government Grants Act, 1895, stipulates that the lease made by or on behalf of the Government is to take effect according to their tenor –

> All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to in Section 2, shall be valid and take effect according to their tenor; any decree or direction of a court of law or any rule of law, statute or enactments of the legislature, to the contrary."

19. We have gone through the records; the order impugned and also the relevant laws.

20. To begin with, the Government of Tamil Nadu, vide G.O.Ms.Nos.812, Revenue, dated 22.11.1888, and 763, Revenue, dated 09.12.1898, assigned the lands to Raja Sir Savalai Ramasamy Mudaliar in T.S.No.41 to an extent of 1 Cawnie 10 Grounds and 1871 Sq.ft., and T.S.No.43/2 to an extent of 5 Grounds and 275 Sq.ft., Vepery Village, Fort-Tondiarpet Taluk, Chennai District, for construction of a choultry, subject to the conditions that (i) the choultry shall be available for free use of railway travellers and it shall be kept in repair; (ii) the plans of the building shall be approved by Government and (iii) the land shall be liable for resumption, without compensation, if it ceases to be employed for the purpose for which it is granted or is used for any other purposes, without the permission of Government.

21. Following the allegations of misappropriation of funds and mismanagement of the choultry, this Court passed a scheme decree on 18.08.1970 in C.S.No.90 of 1963, by removing the then existing hereditary Trustee and appointing the Administrator General and Official Trustee (AGOT) for the management of the property. Pursuant thereto, the High Power

Committee for Chennai Metro Rail Project, chaired by the Chief Secretary, in the meeting held on 09.12.2009, identified the lands assigned to Sir Ramasamy Mudaliar Choultry, namely, the subject lands, and directed the Chennai Metro Rail Limited and the Revenue Department to take appropriate action for allocation of the lands well before the construction of Metro Station is taken up. Thereafter, the District Collector, Chennai, and the Principal Secretary and Commissioner of Land Administration sent reports to Government, on non-functioning of choultry and the commercial exploitation of land/buiildings such as hotels and travel agencies, which was a violation of the conditions imposed by the Government at the time of granting of lands to the choultry. Based on the said reports of the District Collector and the Principal Secretary and Commissioner of Land Administiration and also considering the requirement of the land for implementation of Chennai Metro Rail Project, orders were issued by the Government vide G.O.Ms.No.168, Revenue, dated 21.05.2012, for resumption of lands in Block No.7 of T.S.Nos.41 and 43/2, for violation of conditions of grant and alienation to Chennai Metro Rail Limited. Challenging the said G.O.Ms.No.168, dated 21.05.2012, and notice of eviction, some of the lessees/tenants/occupants moved this Court by filing a batch of 21 writ petitions in W.P.No.19469 of 2012. The said writ petitions were allowed and G.O.Ms.No.168 was set aside by a learned single Judge of this Court vide his order, dated 26.11.2012, and the matter was remitted to the Government to issue notice to AGOT, Co-Trustee, CMRL and writ petitioners, who were in

possession of the land/building, consider the objections to be filed, give them an opportunity of hearing and, thereafter, to pass fresh orders as expeditiously as possible.

22. The Government, considering that if notices were to be issued afresh and further action taken on getting replies, it would further delay the matter apart from paving way to further legal proceedings from the beginning and issue of fresh notices also would not yield any new outcome, thought it fit to file appeals against the order of the learned single Judge in the writ petitions. Accordingly, based on the directions of the Government, the District Collector, Chennai, filed Writ Appeals in W.A.Nos.68 to 88 of 2013 before a Division Bench of this Court against the orders passed by the learned single Judge. Chennai Metro Rail Limited also filed Writ Appeals in W.A.Nos.89 to 106 of 2013. In the above Writ Appeals, the Division Bench passed a common judgment on 12.07.2013, by allowing W.A.Nos.70 to 88 of 2013 filed by the Government and 91 to 106 of 2013 filed by CMRL pertaining to the lands in T.S.No.41 and dismissing W.A.Nos.68 and 69 of 2013, filed by the Government, and 89 and 90 of 2013, filed by CMRL, in respect of the lands in T.S.No.43/2.

23. As against the judgment passed by the Division Bench, dated 12.07.2013, the aggrieved parties in respect of the lands in T.S.No.41 have filed S.L.P.Nos.23081 to 23084 of 2013, which were numbered as Civil Appeal Nos.6065 to 6068 of 2013, before the Supreme Court, which, by its order, dated

25.07.2013, directed the State Government to issue notices to all the lease holders concerned on or before 05.08.2013. The appellants therein were permitted to respond to the said notices on or before 16.08.2013. The determination thereon, one way or the other, was directed to be rendered by the appropriate authority within one week thereafter. In case any of the appellants were to be adversely affected, a well reasoned speaking order was directed to be passed, taking into consideration all the issues canvassed in response to the show cause notices. Likewise, the appellants were given liberty to obtain the final orders passed in the matter on or after 30.09.2013 from the office of the concerned District Collector, Chennai.

24. As per the directions of the Supreme Court of India, notices were issued to AGOT, Co-Trustee and 44 lessees/tenants/occupants by the District Collector, Chennai, on 01.08.2013 and the AGOT, Co-Trustee and 17 lessees/tenants/occupants have furnished their replies before the due tate i.e., 16.08.2013. The District Collector, Chennai, has complied with all the directions of the Supreme Court viz., issuing notice, getting replies, examining with reference to legal position and sent her compliance report to the Government through the Principal Secretary and Commissioner of Land Administration with a request to pass orders for resumption of land in T.S.No.41. The Principal Secretary and Commissioner of Land Administration has endorsed the report of the District Collector, Chennai.

25. Based on the records available, legal position, relevant rules and

regulations, the Government has examined the proposal of the District Collector and the Principal Secretary and Commissioner of Land Administration; considered the objections raised by AGOT, Co-Trustee, lessees/tenants/occupants in depth vide the annexure; and decided to accept the proposal for resumption of land and alienation to Chennai Metro Rail Limited. Accordingly, the Government passed G.O.Ms.No.380, Revenue [LD1(1)] Department, dated 28.09.2013, which was impugned in the writ petitions filed before the learned single Judge, against whose order these Writ Appeals are filed. By the said G.O., the District Collector was directed to take necessary immediate follow-up action for resumption of the land in T.S.No.41, Block No.7, Vepery Village, Fort-Tondiarpet Taluk, Chennai District, and to send an action taken report in that regard to the Government at an early date. Following the same, the District Collector, Chennai, by his orders, dated 30.09.2013, directed the appellants to vacate the land and hand over possession of the premises to the Tahsildar, Fort-Tondiarpet Taluk, Chennai, which orders also were a part of impugnation in the writ petitions.

26. At this point, we feel it relevant to refer to the provisions of law, relied upon by the learned Senior Counsel for the appellants. The said provisions are : (1) Article 300-A of the Constitution of India; (2) Sections 10,25 and 29 of the Official Trustees Act,1913, and (3) Section 3 of the Government Grants Act,1895, which read as under:

(1) Article 300-A:- Persons not to be deprived of

property save by authority of law :- No person shall be deprived of his property save by authrity of law.

(2) Sections 10,25 and 29 of the Official Trustees Act,1913:

Section 10 :

10. Power of High Court to appoint Official Trustee to be Trustee of property.—(1) If any property is subject to a Trust other than a Trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no Trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the Trust, the High Court may on application make an order or the appointment of the Official Trustee by that name with his consent to be the Trustee of such property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same Trusts as the same was held previously to such order, and the same Trusts as the same was held previously to such order, and the previous Trustee or Trustees (if any) shall be exempt from the liability as Trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall, be deemed to affect the provisions of the Indian Trust Act, 1882 (2 of 1882).

Section 25 :

25. Power of High Court to make orders in respect of property vested in Official Trustee.—The High Court may make such orders as it thinks fit respecting any Trust property vested in the Official Trustee, or the income or produce thereof.

Section 29 :

29. Transfer of Trust property by Official Trustee to original Trustee or any other Trustee.—(1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(*a*) the original Trustee (if any); or

(*b*) any other lawfully appointed Trustee; or

(*c*) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such Trustee, and shall be held by him upon the same Trusts as

those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as Trustee of such property except in respect of acts done before such transfer:

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

(3) Section 3 of the Government Grants Act :-

3. Government grants to take effect according to their tenor.—All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

Scope of applicability of Article 300-A to a property belonging to the State :

27. As per Article 300-A of the Constitution, no person shall be deprived of his property except by authority of law. In this case, the property in question is the property of the Government and not the self-acquired property of the appellants. Instead, it was given on lease for Choultry, which, in turn, was sub-leased or sub-let to the appellants by AGOT.

28. Though the intention of the Parliament was to do away with the fundamental right to acquire, hold and dispose of the property as evident from the history of various constitutional amendments and judicial pronouncements, the question that arises for consideration is whether the principles of eminent domain are completely obliterated when a person is deprived of his property by the authority of law under Article 300-A of the Constitution. Deprivation of

property, under Article 300, must take place for a public purpose or public interest. The concept of eminent domain which applies when a person is deprived of his property postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review. But the question as to whether the purpose is primarily public or private, has to be decided by the legislature, which of course should be made known.

29. Requirement of public purpose is invariably the rule for depriving a person of his property and any violation of it is amenable to judicial review. Payment of compensation amount is a constitutional requirement under Article 30(1A) and under the 2nd proviso to Article 31A(1), unlike Article 300A. After the 44th Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a pre-condition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional

or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that Article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and a host of other factors.

Doctrine of Sub-silentio :

30. It is contended that pronouncements of law which are not part of the ratio decidendi and are not authoritative and the same are delivered without reference to the relevant provisions of the Act and decisions which are not express and not founded on reasons nor they proceed on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Therefore, this Court is not precluded from considering the relevant provisions of law to the facts of this case.

31. The Theory 'Salmond on Jurisprudence' explains that a decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of Point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such

circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

32. In this case, the appellants have taken a stand that both the Survey Numbers in S.No.43/2 and T.S.No.41 are identical. Though the said property in the Survey numbers could be viewed in a different angle from that of other Survey numbers, in which matter, the Apex Court has taken a view and laid down a ratio that the course adopted by the respondents in resuming the land for public purpose would be valid even assuming that this matter requires examination, this Court is not the proper forum to examine the position, in view of the questions raised and considered by the Supreme Court and even for a new proposition of law.

33. It is for the Apex Court to look into the same as to the principle that a decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the concerned authority. It may not be proper for this Court to examine this position, as the ratio of that case in a given circumstance could be the law laid down under Article 141 of the Constitution. Therefore, it is for the parties to raise the same before the appropriate forum, as the ratio laid down under Article 141 of the Constitution has binding effect and will be the force of law.

34. A Constitution Bench of the Supreme Court, in a recent decision in the case of *K.T.Plantation Private Limited v. State of Karnataka*, (2011) 9 SCC 1, while dealing with the power of Government to withdraw exemption granted in certain lands, has extensively discussed the scope of Article 300-A and to what extent, it could be applied to the said property. In the said case, the Apex Court, while asserting the importance of the law providing for deprivation of property and where such law is unjust on account of payment of nil compensation, had authoritatively held that Article 300-A enables the State to put restriction on the right to property by a law that law, so as to be sustainable, must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond required in public interest and such limitation must not be disproportionate to the Constitution. The legislation providing for deprivation of the property under Article 300-A must be just and reasonable, as understood in terms of Articles 14, 19(1)(g), 26(b), 301 etc. The Court will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair and unreasonable. It was further held therein that the rule of law, as a principle, contains not explicit components like eminent domain, but has many shades and colours.

35. Adverting to the provisions of the Official Trustees Act, 1913, as per

Section 10, this Court, following the irregularities by the Trust, on application, appointed AGOT to manage the property and also passed a scheme decree under Section 25 with regard to the Trust property vested in the Official Trustee, the income and the produce thereof. Section 29 provides for transfer of Trust property by Official Trustee to original Trustee or any other Trustee or to any other person if the Court so directs.

36. Section 3 of the Government Grants Act is categorical that all provisions, restrictions, conditions and limitations contained in any grant or transfer shall be valid and take effect according to their tenor, despite there being any rule of law, statute or enactment of the Legislature to the contrary.

37. In this context, it is indispensable to refer to Basic Structure of the Constitution of India, in brief, whereupon the entire case on hand dwells.

Basic Structure of the Constitution of India :-

38. Constitution of India is the creation of a constituent act and is an extra-ordinary legislation derived direct from the people and acting in their sovereign capacity for setting up the structure of the Government.

39. Constitution is a set of laws and rules setting up machinery of the Government of a State which defines and determines the relation between the different institutions and areas of Government, the executive, legislature and the judiciary, the central, the State and the local government. A Constitution is a source of jurisprudential fountain head from which other laws must flow and it must grow with the growth of the nation with the philosophical and cultural

advancement of the people who gave birth to it. The Constitution of India is one such document which is the longest of its kind representing the political, economic and social ideals and aspirations of the vast majority of Indian people. The ideals intended to be achieved by the provisions of the Constitution were preceded by immense sacrifices and the Constitution could not be a source for the destruction of these ideals. It is a constituted document keeping with modern constitutional practice, and fundamental to the governance of the country. The people of India have provided a constitutional polity consisting of certain primary organs, institutions and functionaries to exercise the powers provided in the Constitution. All powers belong to the people are entrusted by them to specified institutions and functionaries. This is enshrined in our Preamble with a statement of the Constitution.

40. Except the Indian Constitution, no other Constitution in the world combines under its wings such diverse peoples with different nations, religious, culture and in different stages of economic development into one nation and no other nation is faced with such vast socio-economic problems. It is a noble and grand vision carried out in part by conferring fundamental rights on the people. Legislature, Executive and Judiciary have been created and constituted to serve the people. The commitment of the Constitution to the social revolution through rule of law lies in the effectuation of the fundamental rights and directive principles as supplementary and complimentary to each other. We can say that the preamble, fundamental rights and directive principles of State

policy – the Trinity – are the conscience of the Constitution.

41. The Constitution of India, having solemn principle and concept, underlined the Preamble as follows :

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE – social, economic and political ;

LIBERTY – of thought, expression, belief, faith and worship ;

EQUALITY – of status and of opportunity ;

and to promote among them all

FRATERNITY – assuring the dignity of the individual and the unity and integrity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November,1949, do HEREBY, ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

42. The Preamble to the Constitution forms an important part with the hopes and aspirations of the people of India made on the day when this nation has become republic. The solemn promise is not only to themselves, but also to the coming generations and posterity. The Indian Republic was envisaged in the Preamble as a form of Government of the people, for the people and by the people through their freely elected representatives and thereby found necessary

to qualify the sovereignty of the Republic by using the word 'Democratic', which was made explicit by emphasising "liberty of thought, expression, belief, faith and worship and equality of status and of opportunity", which means, an independent sovereign State may well become a people's Government. Similarly, the dignity of the individual in the Preamble to the Constitution emphases the positive aspect, which signifies the word of moral and spiritual import. It implied an obligation on the part of the Union to respect the personality of the citizen and to create conditions in which every citizen would be left free to find individual self-fulfilment.

43. No reading of any Constitution can be complete without reading it from the beginning to the end. While the end may expand, or alter, the point of commencement can never change. It is the Preamble wherefrom the Constitution commences. Hence, the significance of the Preamble.

44. It is no exaggeration to say that the Preamble to the Constitution of India is its spirit and backbone. The Preamble pervades through and inspires all the provisions of the Constitution. It is also the quintessence of the Constitution. Ever since the day it was adopted by the Constituent Assembly, it has enabled the Constitution to stand erect – neither bending nor breaking.

45. The significance of the Preamble is that it contains the fundamentals of our Constitution. The people of India resolved to constitute their country

into a sovereign democratic republic. No one can suggest that the words and expressions in the Preamble are ambiguous in any manner. By their true import and connotation, it is well known that no question of any ambiguity is involved.

46. The objectives specified in the Preamble contain the basic structure of our Constitution, which cannot be amended in exercise of the power under Article 368 of the Constitution. The concept relating to "separation of powers among the legislature, the executive and the judiciary" and the fundamental concept of an independent judiciary are now elevated to the level of basic structure of the Constitution and are the very heart of the constitutional scheme.

47. Basic Structure of the Constitution of India consists of the following features:

(*1*) Supremacy of the Constitution;

(*2*) Republican and Democratic form of Government;

(*3*) Secular character of the Constitution;

(*4*) Separation of powers between the legislature, the executive and the judiciary;

(*5*) Federal character of the Constitution.

(6) Independence of the Judiciary.

Separation of Powers :

48. Of the above basic features, if we see Separation of Powers, the

Constitution of India provides for governance of the country by its three essential pillars viz., Legislature, Executive and Judiciary. The principle 'Separation of Powers' deals with the mutual relations among the said three organs of the Government. The doctrine of separation of powers has no place in strict sense in Indian Constitution, but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the functions of another.

49. In Indian Constitution, there is express provision that "Executive power of the Union shall be vested in the President and the executive power of the State shall be vested in the Governor..." (Article 154(1) of the Indian Constitution). But, there is no express provision that legislative and judicial powers shall be vested in any person or organ.

50. It is now to be seen, what is the real position in India, regarding Separation of Powers ?

51. President, being the executive head, is also empowered to exercise legislative powers. In his legislative capacity, he may promulgate Ordinances in order to meet the situation, as Article 123 (1) says – "If, at any time, except when both Houses of Parliament are in Session, President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to

require." When proclamation of emergency has been declared by the President due to failure of Constitutional machinery, the President has been given legislative power under Article 357 of our Constitution to make any law in order to meet the situations. A power has also been conferred on the President of India under Articles 372 and 372-A to adopt any law in the country by making such adaptations and modifications whether by way of repeal or amendment as may be necessary or expedient and to provide that the law so adapted or modified shall have effect subject to adaptation and modifications so made and the adaptation and modifications shall not be questioned.

52. The President of India also exercises judicial function, as Article 103 of the Constitution empowers the President to decide cases of disqualification of membership of the Houses of Parliament. According to this Article, if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the question shall be referred for the decision of the President and his decision shall be final. Article 50 lays emphasis to separate judiciary from executive. But, in practice, we find that the executive also exercises the powers of judicial function as in appointment of Judges (Articles 124, 126 and 127). The legislature (either House of Parliament) also exercises judicial function in removal of President (Article 56) in the prescribed manner. Judiciary also exercises legislative power. High Court and Supreme Court are empowered to

make certain rules, legislative in character. Whenever High Court or the Supreme Court finds a certain provision of law against the Constitution or public policy, it declares the same null and void and then amendments may be incorporated in the legal system. Sometimes, High Court and Supreme Court formulate the principles on the point where law is silent. This power is also legislative in character.

53. Apart from this, when Judges establish a new principle by means of a judicial decision, they may be said to exercise legislative and not merely judicial power. The High Courts, in certain spheres, perform functions which are administrative rather than judicial. Their power of supervision over subordinate courts is more of administrative nature rather than judicial (Article 227). Under Article 228, they have power to effect transfer of cases.

54. In strict sense, the powers of one organ of democracy should not be usurped by another organ, thereby maintaining the decorum of three pillars of democracy.

Separation of Powers vis-a-vis Judicial Pronouncements :

55. The following cases explain the real position of doctrine of separation of powers, prevailing in our country :

55.1. *In re* Delhi Laws Act case, AIR 1951 SC 332, the then Hon'ble Chief Justice Kania observed :

> "Although in the Constitution of India there is no express separation of powers, it is clear that a

> legislature is created by the Constitution and detailed provisions are made for making that legislature pass laws. Is it then too much to say that under the Constitution the duty to make laws, the duty to exercise its own wisdom, judgment and patriotism in making law is primarily cast on the legislature? Does it not imply that unless it can be gathered from other provisions of the Constitution, other bodies, executive or judicial, are not intended to discharge legislative functions ?"

55.2. To the same effect, another case is Rai Sahib Ram Jawaya v. State of Punjab, AIR 1955 SC 549, in which the then Hon'ble Chief Justice B.K.Mukherjea observed :

> "The Indian Constitution has not indeed recognised the doctrine of separation of powers in the absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another."

55.3. In *Ram Krishna Dalmia v. Justice Tendolkar*, AIR 1958 SC 538, the then Hon'ble Chief Justice S.R.Das opined that in the absence of specific provision for separation of powers in our Constitution, such as there is under the American Constitution, some such division of powers legislative, executive and judicial, is nevertheless implicit in our Constitution. Same view was expressed in Jayanti Lal Amrit Lal v. S.N.Rana, AIR 1964 SC 648.

55.4. Judiciary is independent and a separate wing of the Government. Executive or Legislature has no concern with the day to day functioning of the

Judiciary. In *Chandra Mohan v. State of U.P.*, AIR 1966 SC 1987, Supreme Court held :

> "The Indian Constitution, though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States.... But, at the time the Constitution was made in most of the States the magistracy was under the direct control of the executive. Indeed, it is common knowledge that in pre-independence India, there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery."

55.5. In *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, the then Hon'be Chief Justice Sikri observed :

> "Separation of powers between the legislature, the executive and the judiciary is a part of the basic structure of the Constitution; this structure cannot be destroyed by any form of amendment."

55.6. In *Smt.Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299, the then Hon'ble Chief Justice Chandrachud observed :

> "The American Constitution provides for a rigid separation of governmental powers into three basic divisions – the executive, legislative and judicial. It is an essential principle of that Constitution that powers entrusted to one department should not be exercised by any other department. The Australian Constitution follows the same pattern of distribution of powers. Unlike these Constitutions, the Indian Constitution does not expressly vest the three kinds of power in three different organs of the State. But the principle of separation of powers is not a magic formula for keeping the three organs of the State within the strict confines of their functions."

55.7. In *Hari Shankar Bagla v. State of M.P.*, AIR 1954 SC 465, it was

observed :

> "The Legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination of the choice of the legislative policy and of formally enacting that policy into a binding rule of conduct."

Evaluation of the principle :

56. The value of the principle "Separation of Powers" lies in the fact that it seeks to preserve the human liberty by avoiding the concentration of powers in one person or body of persons. The different organs of Government for the sake of liberty should be prevented from encroaching on another province.

57. History has proved the fact that if there is a complete separation of powers, the Government cannot run smoothly and effectively. Smooth running of Government is possible only by co-operation and mutual adjustment of all the three organs of the Government. The aim behind the principle is to protect the people against capricious, tyrannical and whimsical powers of the State.

58. Virtually, absolute separation of powers is not possible in any form of Government. In view of the variety of situations, the legislature cannot foresee or anticipate all the circumstances to which a legislative measure should be extended and applied. Therefore, legislature is empowered to delegate some of its functions to administrative authority (executive). But, one thing is notable

that legislature cannot delegate its essential legislative power.

59. With the widening of the horizons of 'Judicial Activism', criticism emanated from a few percent of the people that the judiciary is overstepping its bounds and taking over the Government functions, but, this is not a justifiable thought. The Supreme Court and the High Courts act as watchman to keep Executive and Legislature within the bounds of law. Today, millions of people are suffering in the country because of the failures or inactions of the executive. It is the Judiciary, which is holding out hope for them.

60. The Indian Constitution, adopted by the Constituent Assembly on November 26,1949, is a comprehensive document, containing 395 Articles and several Schedules. Besides dealing with the structure of Government, the Constitution makes detailed provisions for the rights of citizens and other persons in a number of entrenched provisions, and for the principles to be followed by the State in the governance of the country, labelled as "Directive Principles of State Policy".

61. Historical and geographical factors have been responsible for the build of the Constitution, which is the largest Constitution in the world. The framers of the Constitution were keen to preserve the democratic values to which Indians had attached the highest importance in their struggle for freedom. But, they were also keen to make provisions considered to be

necessary in the light of the social and economic backwardness of certain sections of society. They had also before them the precedent of the Government of India Act,1935, whose detailed provisions were found suitable for adoption in the interests of continuity and certainty. Some precautions for the constitutional image being distorted or being impaired in its essential features were also required. All this has contributed to the length of the Indian Constitution. Therefore, all the organs of the Government, including the citizens of India, and various enactments are bound by and subject to the provisions of the Constitution of India.

62. The basic structure doctrine or the doctrine of basic structure of the Constitution, as evolved by the Supreme Court of India, is unique in constitutional jurisprudence. The seeds of the theory are to be found in the Preamble to the Constitution. Landmark pronouncements of the Supreme Court in *Kesavananda Bharati,* AIR 1973 SC 1461, *Indira Nehru Gandhi* v. *Raj Narain,* 1975 Supp SCC 1, and *Minerva Mills,* 1980 (3) SCC 625, bear testimony to this truism. Any amendment of the Constitution is open to judicial review and liable to be interfered with by the Court on the ground that it affects one or the other of the basic features of the Constitution.

63. The Constitution of India is a constitutive document, in keeping with modern constitutional practice, and fundamental to the governance of the country. The people of India have provided a constitutional polity consisting of

certain primary organs, institutions and functionaries to exercise the powers provided in the Constitution. No other Constitution combines under its wings such diverse people, numbering now more than one billion, with different languages and religions and in different stages of economic development, into one nation, and no other nation is faced with such vast socio-economic problems. The Constitution cannot be interpreted like an ordinary statute, but as a Constitution, which, apart from setting up a machinery for the Government, has a noble and grand vision, which was put in words in the Preamble and carried out in part by conferring fundamental rights on the people and by the application of Directive Principles.

64. The Preamble of the Constitution of India, the Fundamental Rights and the Directive Principles, constituting a 'Trinity', assure to every person in a welfare State, social and economic democracy, with equality of status and dignity of persons. Political democracy without social and economic democracy would always remain unstable. Social democracy must become a way of life in an egalitarian social order. Economic democracy aids consolidation of social stability and smooth working of political democracy. The Preamble emphatically declares that we have given to ourselves the Constitution with a firm resolve to constitute a sovereign, socialist, secular, democratic, republic, with equality of status and of opportunity to all its citizens. “Rule of Law" being our constitutional faith, it is imperative that every governmental institution must observe it, irrespective of any obstacles or odds on its path.

65. Indian Constitution is not to be construed as a mere law, but as the machinery, by which laws are made. It is a living and organic instrument, which, of all documents, has the greatest claim to be construed broadly and liberally.

66. Keeping the above law in mind, if we see the present case, a circumspection of the facts would reveal that the land to an extent of one Cawni 10 grounds and 1871 sq.ft. in T.S.No.41 of Vepery Village, Fort Tondiarpet, Taluk, Chennai District was granted by the Government of Tamil Nadu to one Sir Ramaswamy Mudaliar to build a Choultry for the use of persons, who come by rail from different parts of the presidency and have no house or friends in Madras. While assigning the above land by the Government, the following conditions were imposed :

1. that Choultry should be available for the free use of railway travellers;
2. that the buildings constructed should be approved by the Government; and more importantly,
3. that the land shall be liable to resumption without compensation, if it ceases to be used for the purpose for which it is granted or is used for any other purposes without the permission of the Government.

67. It is seen that the said lands were granted and assigned in favour of Sir Ramaswamy Mudaliar by a Government Order in G.O.Ms.No.253 dated 17.01.1899, whereby, the conditions were incorporated in the following words:

1. that the land shall revert to Government when it ceased to be used for the purpose for which it is granted; and
2. that should be property be at any time resumed by Government, the compensation payable, therefore, shall in no case exceed the cost or the then present value whichever shall be less of any building erected or other works executed on the land.

68. Subsequently, the said lands were subjected to civil jurisdiction and the competent Civil Court, namely, the High Court of Judicature at Madras, framed a Scheme Decree in C.S.No.90 of 1963. Accordingly, properties held by Sir Ramaswami Mudaliar's Choultry were vested with the Administrator General and Official Trustee (hereinafter referred to as "AG&OT") of Tamil Nadu from 18.08.1970. From then onwards, the management of the Trust and the properties attached to it were under the control of the AG&OT. As per the Scheme Decree, the AG&OT of Tamil Nadu leased out the lands in T.S.No.41 to various tenants and collected rent.

69. While that being so, having regard to the unprecedented growth of population in general with particular reference to the Metropolitan City of Chennai, there was an imminent need to provide better transportation facilities to the commuters as also office goers and business people, which persuaded the State to expand the rail transport facility in the City of Chennai and for such avowed object, CMRL had planned a project called "Chennai Metro Rail Project" which aimed for construction of two corridors under Phase-I. Corridor I starts from Washermenpet and ends at Airport at a length of 23.1 kms and Corridor II starts from Chennai Central and ends at St. Thomas

Mount Station at a length of 22 kms. As per the project, portions of Corridor I with a length of 14.3 kms between Washermenpet and Saidapet and portions of Corridor II with a length of 9.7 kms from Chennai Central to Anna Nagar would be underground Corridors and the remaining portions would be in an elevated position.

70. CMRL is stated to be a Special Purpose Vehicle (SPV), formed for the purpose of implementing the Chennai Metro Rail Project. The project is stated to be funded by the Government of India and the State Government by way of equal equity contribution in subordinate debt (Government of India 20%, Government of Tamil Nadu 20.78% and the balance 59.22% being met from the loan assistance from Japan International Co-operation agency). The Government of India has already accorded sanction for the project as well as for its participation.

71. The lands in question are covered by the project, namely, Corridor I, starting from Washermenpet to Chennai Airport and the project is a time-bound project with an objective to ease out phenomenal growth of traffic congestion in the City of Chennai and any delay in executing the project would affect the plans announced by the Government of India as well as the State Government, causing inconvenience to Chennai public and further leading to contractual implications, such as extension of time and escalation of project costs, which in turn would cost the public exchequer several hundred crores of rupees. Therefore, the State has come out with an immediate action by invoking

Section 3 of the Government Grants Act, 1895 for resumption of lands.

72. Interestingly, it is the matter concerned not only with the action of the Executive, but also involvement of other organ of the Democracy, namely Judiciary, for the purpose of maintenance and control over the said property. The lands in question undoubtedly are lands belonging to the State of Tamil Nadu and the same were originally granted in favour of Sir Ramaswamy Mudaliar and an order of grant was also passed in this regard with certain conditions. In the meanwhile, such persons ultimately approached the competent Court of Civil jurisdiction i.e., High Court of Madras, wherein a Scheme was framed and that decree is in force as on date. It is equally important to note that after framing of the said Scheme, the subject property has been entrusted to a Trustee under the control of judiciary, namely, AG&OT. Therefore, it is more important that in a public project, for immediate execution of the same, the law of the land has to be followed in vesting and divesting the property from the authorities concerned before resumption of the land. It is true that the State Government is empowered to invoke appropriate jurisdiction under the authority of law to resume the land and vacate persons, who later on came to the picture in possession of the property, lawfully.

73. If that could be the position, the question, which arises for consideration is, as to, whether the State, by invoking *eminent domain*, can

resume the land under the authority of law, namely, Section 3 of the Government Grants Act, 1895, notwithstanding any law for the time-being in force. Here again, another question arises to the effect that when the subject matter is concerned with two authorities, namely, Union of India and State of Tamil Nadu, and the property in question has already been vested with the judicial organ, viz., AG&OT, which comes under the purview of Official Trustees Act, is it appropriate for the State authority alone to take a decision for resumption of the land, that too without taking proper course in resumption of the land by approaching appropriate Scheme Court or in the absence of any order in respect of vesting, divesting, modification or any change in control and management of the property from the AG&OT Court, dealing with AG&OT properties, which is normally headed by a senior-most Judge of the High Court of Madras. Merely because the State is dominantly empowered to exercise its jurisdiction under the Government Grants Act for resumption of the land for a public purpose, will they be exempted from approaching the appropriate Scheme Court and also AG&OT Court especially when such Decrees and Orders are in force as on date.

Eminent Domain :

74. Coming to the aspect of *eminent domain,* it is to be stated that principles of public accountability are applicable to State officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention

in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision-making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being "public officer" or "public servant", is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance. Therefore, it is expected of the State officers not to forget the principles of public accountability in exercise of the State's power of eminent domain and the legislative intent behind providing safeguards and some benefits against the resumption cannot be frustrated by inaction and omissions on the part of the officers. Imperatively, it must follow that the Central Government and all State Governments must issue appropriate directions to ensure that there is no harassment, hardship or inequality caused to the owners/persons interested in the lands to be resumed by the State in exercise of its power of *eminent domain.*

75. Our Constitution, subject to certain exceptions, has guaranteed the fullest protection to property. It has not only provided that no person can be deprived of property by the executive without legislative sanction but it has further provided that even the legislature cannot deprive a person of his property unless there is a public purpose and then only on payment of compensation. Article 31, in this regard, provides as follows:

"31. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(*a*) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(*b*) the provisions of any law which the State may hereafter make-

(*i*) for the purpose of imposing or levying any tax or penalty, or

(*ii*) for the promotion of public health or the prevention of danger to life or property, or

(*iii*) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of Section 299 of the Government of India Act, 1935."

76. Property, in legal sense, means an aggregate of rights, which are guaranteed and protected by law. It extends to every species of valuable right

and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law.

77. Article 31, which was deleted by the Constitution 44th Amendment Act, 1978 with effect from 20.06.1979, provided for compulsory acquisition of property. Clause (3) of that Article provided that, no law referred to in clause (2), made by the legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. Article 31-A confers protection upon laws falling within clauses (*a*) to (*e*) of that Article, provided that such laws, if made by a State Legislature, have received the assent of the President. Clause (*a*) of Article 31-A comprehends laws of agrarian reform. Right to property is a human right as also a Constitutional right. But, it is not a fundamental right. At the same time, each

and every claim to property would not be a property right.

78. In Ramanatha Aiyar's *The Law Lexicon*, Reprint Edn., 1987, at p. 1031, it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land.

79. Also, the word 'property' used in Article 300-A, must be understood in the context in which the sovereign power of eminent domain is exercised by the State and property expropriated. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This will be subject to judicial review and it is the duty of the court to determine whether a particular purpose is a public purpose or not.

Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor every exercise of eminent domain an acquisition or taking possession under Article 300-A. Generally speaking, preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet, deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A.

80. What needs to be emphasised is, that, although in exercise of the power of eminent domain the State can acquire the property for a public purpose, it must be remembered that compulsory acquisition of the property which is under occupation of an individual is a serious matter and has grave repercussions on his constitutional right of not being deprived of his property without the sanction of law viz., Article 300-A and the legal rights. Therefore, the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the owner/occupant landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of land is exercised, because that results in depriving

the individual of his property.

81. In this case, though the State, through the District Collector of Chennai and also AG&OT concerned, made applications before the AG&OT Court under the jurisdiction of the High Court of Madras for taking suitable orders, such applications have subsequently been withdrawn by them for reasons best known to them. In the matter in question, when the subject land is governed by an authority of law being controlled and maintained by the judiciary, then involvement of judiciary could not be bye-passed or dispensed with merely by invoking the Government Grants Act. The basic structure of the Constitution defines certain distinct and separate powers for Executive and Judiciary. In the event of Executive acting independently under the authority of law, the role of judiciary to look into its functioning is very limited. But, once they approach the other organ, namely, Judiciary under the competent jurisdictional Court, the Executive should understand and delineate as to the proper method and procedures to be adopted in taking out the land, which has already been entrusted with the judiciary for proper control and maintenance. In that case, what is required to be done is fair play in applying proper rule of law, which is the basic structure of governance of our country in dealing with separation of powers of the Executive and Judiciary.

Rule of Law :

82. The Constitution of India provides for governance of the country by

its three essential pillars viz., the legislature, the executive and the judiciary and it promises governance through "Rule of Law". Maintenance of "Rule of Law", therefore, is a *sine qua non* under our constitutional scheme and, in fact, is essential to sustain any democracy. We must consider ourselves to be fortunate enough that notwithstanding the vastness and size of our population and the complexity and problems we have, on account of diverse philosophy, democracy has taken deep roots in this country and democratic institutions have flourished to such an extent that it will be difficult for any of our neighbours to destabilise the same. It is the sacred duty of the judiciary to see that the "Rule of Law" is maintained and it shall be construed as a constitutional obligation for the judiciary to do all that is possible in maintaining the "Rule of Law" not merely in interpreting the provisions of law but also in issuing directions and orders to the authorities concerned for maintenance of the "Rule of Law".

83. In the given situation, in the instant case, the action of the Executive, without resorting to the Rule of Law in resumption of the land in question, being controlled and maintained by the judiciary under the Civil jurisdiction, cannot be said to be interpreted in the manner as contemplated under Section 3 of the Government Grants Act, 1895, when notwithstanding any law for the time being in force, the State has got absolute power to resume its own property, which has been entrusted to the other organ of the democracy, namely, Judiciary. The Executive should act only under the authority of law by invoking appropriate jurisdiction, when the subject property is already under

the control of the judiciary. Such an act of the State, in our considered opinion, bypassed the procedures to be followed and is not the appropriate method to be adopted by them for resumption of the land, though the said land is required for a public purpose. Rule of law is supreme beginning with the fundamental to special features of Constitution and no authority under them can waive such jurisdictional limits contemplated under law. This Court has already taken a view in one way or the other in interpreting Section 3 of the Government Grants Act, 1895 and the basic structure of the Constitution is the fundament of the Constitution. Therefore, the three organs should always be within the Rule of law.

84. In this regard, the crucial question that arises for consideration in this case is, when one organ of democracy, namely, the executive/Government has been empowered to entrust its own property to another organ viz., judiciary under which the control has been given to Administrator General & Official Trustee (AGOT) under an enactment, on the principle of eminent domain, can the Government invoke another enactment i.e., Government Grants Act under Section 3, resuming the land on its own, without resorting to any procedure contemplated under the Official Trusts Act ?

85. To examine the above issue, in this case, the Government, while making an order for resumption of land through its executive, did not take any order either from the scheme court or from the AGOT Court. Though there

were attempts made by the executive to file applications one by Chennai Metro Rail Limited and the other by District Collector, subsequently, the same were withdrawn. So, it is clear that there was no order made by AGOT Court, which is the court of competent jurisdiction to permit AGOT to hand over the possession of the land in its control to the Government, for resumption. The said judicial procedure has been overlooked by the Government in resuming the land, even of its own. This act of the Government, bypassing an act under which the entrustment has been made, would amount to violation of the basic structure of the Constitution of India and the power of separation which has been demarcated could not be usurped by one organ on its own.

86. It is necessitated that though the earlier Division Benches of this Court have taken their own perceptions on the matter, in the given facts and circumstances of the case, our conscientious endeavour is to arrive at the correct legal position in accordance with law, particularly, on the Basic Structure of the Constitution and the Rule of Law.

Article 141 – Judicial Discipline and Binding Obligation :

87. The Supreme Court, with regard to the very same subject lands, on the appeals filed by Chennai Metro Rail Limited and the State of Tamil Nadu in Civil Appeal Nos.2572-2573 of 2014 and Civil Appeal Nos.2575-2578 of 2014 respectively, against the Division Bench judgment, dated 12.07.2013, has dealt with the matter as regards T.S.No.43/2 as well as T.S.No.41 and, by a judgment, dated 21.02.2014, held that the project details and the plan annexed

with it disclose that the lands situated in Survey No. 43/2 as well as Survey No. 41 were all part of the projects for putting up various other ancillary units such as mechanical plant rooms, electrical plant rooms, building services, drop-off and pick-up facilities, airport check-in facilities, ventilation shafts, subway, feeder bus stand, multi-model facilities, pick-up and drop-off bay, MTC Bus bay, fireman staircase, entry and exit points and that if the taking over of the lands by the Chennai Metro is not allowed, the same would seriously prejudice and cause unnecessary hurdles in proceeding with the project. Holding so, the Supreme Court set aside the Division Bench judgment of this Court and allowed W.A.Nos.68,69,89 and 90 of 2013, filed by State and CMRL, thereby paving way for resumption of land for Chennai Metro Rail Project. Allowing the appeals, the Supreme Court, however, directed the appellants therein, who were State and CMRL, to value the buildings belonging to the first respondent therein, who is not a party to the proceedings in these appeals, standing in T.S.No.43/2, determine the compensation and pay the same to the first respondent within three months. By the said judgment, the first respondent therein was directed to surrender possession of the lands through AGOT within four weeks from the date of receipt of copy of the said judgment. The relevant portions of the judgment of the Supreme Court are as under :

> "18. While considering the submissions of learned Additional Solicitor General and Mr. Gopal Subramanium, learned Senior Counsel for the First Respondent, inasmuch as we find that the reasoning of the Division Bench in having stated that the underground Metro Station has been

planned in a stretch of Land on the Northern side of the Arterial Road, namely, Poonamallee High Road and that certain other lands were available in that side and, therefore, there was no necessity for taking over the lands in the possession of the First Respondent is patently a conclusion which was contrary to the records placed before the Division Bench and the same cannot be sustained. In other words, as rightly pointed out by learned Additional Solicitor General, the conclusion of the Division Bench that the lands concerned in these Appeals, namely, the one situated in Survey No. 43/2 were not part of the project of the Chennai Metro was a wrong assimilation of facts. When it has been demonstrated before us based on the project details and the plan annexed with it, which disclose that the lands situated in Survey No. 43/2 as well as Survey No. 41 were all part of the projects for putting up various other ancillary units such as mechanical plant rooms, electrical plant rooms, building services, drop-off and pick-up facilities, airport check-in facilities, ventilation shafts, subway, feeder bus stand, multi-modal facilities, pick-up and drop-off bay, MTC Bus bay, fireman staircase, entry and exit points, if the taking over of the lands by the Chennai Metro is not allowed, the same would seriously prejudice and cause unnecessary hurdles in proceeding with the project. In our considered view, the failure of the Division Bench in noting the details displayed in the plan and the project which were placed before it has resulted in the passing of the impugned Order. The Division Bench failed to note that the project details pertaining to the proposed underground Metro Station and the other supporting provisions to be made such as mechanical plant rooms, electrical plant rooms, bus bay and other developments to be carried out spread over a vast extent of land both on the Northern side of the Poonamallee High Road as well as the lands situated on the Southern side of the said Road with which we are now concerned. Therefore, in the light of the above details placed before the Court which according to learned Additional Solicitor General was made available before the Division Bench also, we have no reason to reject the said submission in order to sustain the conclusion of the Division Bench. In other words, the conclusion of the Division Bench having been reached without properly examining the relevant documents relating to the Chennai

Metro Project, namely, the plans, the project schedule and the other averments placed before the Division Bench, the impugned order of the Division Bench cannot be sustained.

19. Mr. Gopal Subramanium, learned Senior Counsel appearing for the First Respondent in support of his submission that the lands situated in Survey No. 43/2 were not required at all for the purpose of carrying out the Metro Project and referred to an affidavit filed before the Division Bench by the Managing Director of Chennai Metro Rail Limited. The learned Senior Counsel submitted that in the said affidavit the reference to the Metro Rail Station planned along the Poonamallee High Road has been stated and while referring to the same, a specific reference was made to the private buildings located opposite to Picnic Hotel and that acquisition of those private lands would cost dearly to the State Exchequer apart from evacuation of the tenants/owners would consume considerable length of time which would in turn cause delay in the construction of the underground Station. When we perused the said affidavit which has been extracted in the reply affidavit filed by the Managing Director of Chennai Metro in W.P. No. 19469 of 2012, we find that statement came to be made when a litigation was launched at the instance of Hotel Picnic and while meeting the stand of Hotel Picnic, it was stated that the above statement came to be made. We do not find any scope to reject the stand of the Appellant with reference to the lands situated in Survey No. 43/2 which had nothing to do with the construction of the underground Metro Station. Though, the various other units to be set up in the lands in Survey No. 43/2 were also part of the Metro Project as has been demonstrated before us based on relevant documents, the reference to the Heritage Buildings and other private buildings situated opposite to Hotel Picnic was referred to by Chennai Metro while pointing out its inability to plan the setting up of underground Metro Station in any other land except the lands where Hotel Picnic was situated. Therefore, the said submission of the learned Senior Counsel for the First Respondent does not in any way support the stand of the First Respondent. As far as the contention of Mr. Gopal Subramanium that like in the case of other occupants wherein a direction was issued by this

Court to give a show cause notice and decide the matter, the said contention cannot be countenanced in this case inasmuch as before the Division Bench of the High Court as well as before us the issue was argued on merits. In fact, the Division Bench after hearing the Appellants and the First Respondent allowed both his Writ Petitions by modifying the order of the learned Single Judge and thereby held that there was no necessity for a remand. Therefore, since we have also decided the whole controversy on merits there is no need for a remand.

20. Therefore, once we are convinced that the entitlement of the Appellant to hold the lands belonging to the State falling under Survey Nos. 43/2 as well as 41 which the Appellant is able to take possession of from the State Government without payment of any compensation, the only other question to be examined is as to whether the lease granted in favour of the First Respondent by the AG & OT based on the directions of the High Court can have any implication in preventing the Appellant from taking over the lands. As noted earlier, indisputably the lands in Survey No. 43/2 belong to the State. At the time when the lands were granted and assigned in favour of Sir Ramaswamy Mudaliar Trust vide GO Ms. Nos. 763 and 253 dated 09.12.1898 and 17.01.1899 respectively, conditions were imposed to the effect that the lands would revert back to the Government when it ceases to be used for the purpose for which it was granted and that should the property at any time resumed by Government, the compensation payable should in no case exceed the cost or the then present value whichever shall be less of any building erected or other works executed in the land. Though, learned Additional Solicitor General sought to contend as was also contended before the High Court that by leasing out the lands to different parties the condition No. 1 was violated, namely, that the land was put to different use than for what it was granted, we do not find any good grounds to accept the same. On the other hand, we find that the Trust itself was vested with the AG & OT on 18.08.1970 pursuant to a Scheme Decree framed by the High Court in C.S. No. 90 of 1963. From then onwards, the AG & OT was administering the Trust and was apparently fulfilling the purpose for which the Trust came to be created, though, by leasing out the lands to different

individuals for the purpose of generating income from the lands. The AG & OT by approaching the High Court, as and when required, seem to have granted the lease of the lands to different parties based on the orders passed by the High Court.

21. In so far as the First Respondent was concerned, his lease came into existence initially on 22.12.1972, and by Order dated 10.12.2004 in Application No. 915 of 2003, the lease in favour of the First Respondent was extended for a further period of 25 years by enhancing the rent. The said order was also confirmed by the Division Bench in the Order dated 20.08.2009 in O.S.A. No. 298 of 2004. In the said circumstances, it cannot be held that the said possession with the First Respondent was unlawful. However, on that basis when it comes to the question of resumption of the land by the State Government when the Government through the AG & OT thought it fit to resume the lands which was in accordance with the terms contained in the Original Grant, namely, GOS No. 763 and 253 dated 09.12.1898 and 17.01.1899, there would be no scope for the First Respondent to contend that the Appellants are not entitled for the resumption of the lands situated in Survey No. 43/2.

22. We, therefore, hold that the State Government as the owner of the land and having regard to the right retained by it while making the grant in the years 1898 and 1899 and in the larger public interest of setting up of the Chennai Metro Project the lands were required by it, the same cannot be questioned by the Original Grantee or by the lessees whose holding was subordinate in character to the Original Grantee. Therefore, we do not find any justification in the Division Bench in having interfered with the impugned GO Ms. No. 168 dated 21.05.2012 and the consequential orders of the Tehsildar dated 21.06.2012 and that of the AG & OT dated 25.06.2012 directing the First Respondent to handover possession of the lands.

23. Therefore, while the impugned GO and the consequential orders of the Tehsildar and AG & OT can be sustained, having regard to the condition contained in the initial GO Ms. Nos. 763 and 253 dated 09.12.1898 and 17.01.1899 since based on valid orders of the High Court and the AG & OT the First Respondent developed its

> Hotel business in the lands in question, while resuming the lands, the State Government along with the Chennai Metro is bound to compensate the First Respondent for the buildings which were erected in the said land in Survey No. 43/2 based on the valuation to be made by the appropriate Authorities.
>
> 24. Therefore, while allowing the Appeals of the State Government as well as the Chennai Metro and while setting aside the Judgment of the Division Bench, Writ Appeal Nos. 68, 69, 89 and 90 of 2013 are allowed. We, however, direct the Appellants to value the buildings belonging to the First Respondent standing in Survey No. 43/2 and determine the compensation and pay the same to the First Respondent. The said exercise of valuation and payment of compensation shall be effected within three months from this date.
>
> 25. In the light of our above orders, the First Respondent is directed to surrender possession of the lands in Survey No. 43/2 in an extent of 5644 sq. ft. through the AG & OT within four weeks from the date of receipt of copy of this judgment. With the above directions, these appeals are allowed."

88. Judicial discipline binds us and the constitutional wisdom underlined under Article 141 of the Constitution is to be followed. The parties before the Supreme Court with regard to Survey Nos.41 and 43/2 were same. The Apex Court discussed about both the above survey numbers, while dealing with survey number 43/2. Under the circumstances, the ratio laid down by the Supreme Court in its recent judgment, allowing the appeals filed by State and Chennai Metro Rail Limited, has to be squarely made applicable to the present case also.

89. Accordingly, while upholding the rule of law that there shall be a

proper procedure to approach the AGOT Court and also the competent court of civil jurisdiction where the scheme decree has been formulated for control and management of the property for obtaining an order before resumption of the land under the Official Trustees Act, applying the law laid down by the Supreme Court in Civil Appeal Nos.2572-2573 and 2575-2578 of 2014, these Writ Appeals are to be dismissed.

90. It is true, as contended by the learned Additional Advocate General, Section 3 of the Government Grants Act declares the unfettered discretion of the Government to impose such conditions and limitations as it thinks fit, no matter what the general law of the land be. The meaning of Sections 2 and 3 of the Government Grants is that the scope of that Act is not limited to affecting the provisions of the Transfer of Property Act only. The Government has unfettered discretion to impose any conditions, limitations, or restrictions in its grants, and the rights, privileges and obligations of the grantee would be regulated according to the terms of the grant, notwithstanding any provisions of any statutory or common law, but the same shall be subject to Rule of Law and cananot be contrary to the basic structure of the Constitution, which means the Government should follow the proper procedure, which, in this case, is already in currency but not followed, while revoking the grants.

91. Moreso, Article 300-A would be equally violated if the provisions of law authorising deprivation of property have not been complied with. While enacting Article 300-A, the Parliament has only borrowed Article 31(1), the

“Rule of law” doctrine and not Article 31(2), which had embodied the doctrine of "Eminent Domain". Article 300-A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive. The legislation providing for deprivation of property under Article 300-A must be just, fair and reasonable, as understood in terms of Articles 14, 19(1)(g), 26(b), 301, etc. Thus, in each case, courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution, as indicated above.

92. Therefore, we are constrained to hold that though there is a violation of Rule of Law by the authorities in resumption of lands in question, with heavy heart, by giving due respect to the *ratio decidendi* of the Supreme Court with regard to the very same subject lands, we are left with no other choice but to follow the same under Article 141 of the Constitution.

93. However, while parting with, we feel it our duty to say that the executive action taken in this case by the State and its officers is incompatible to the basic principle of the Rule of Law. The facts and the position in law are (1) that the buildings constructed on the piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the

Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. Under the circumstances, the action of the Government in taking the law into their hands and dispossessing the appellants by way of a Government Order exhibits a clear disregard to the normal requirements of the rule of law, apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. At the same time, this Court is conscious of the situation, wherein the subject land has been sought to be acquired for a public purpose on a larger public interest of the people of Chennai Metropolitan city; the significance of the project, the delay in its execution and the ratio laid down by the Supreme Court so also the concern of CMRL for taking possession of the land for putting up various ancillary units, such as, mechanical plant rooms, electrical plant rooms, building services, drop-off and pick-up facilities, airport check-in facilities, ventilation shafts, subway, feeder bus stand, multi-modal facilities, pick-up and drop-off bay, MTC Bus bay, fireman staircase and entry and exit points.

94. With the above *obiter dicta*, all these Writ Appeals are dismissed. No costs. Consequently, the connected M.Ps. are closed.

Index : Yes (V.D.P.,J.) (M.D.,J.)
Internet : Yes 12-06-2014

dixit

V.DHANAPALAN,J.

AND

M.DURAISWAMY,J.

dixit

Common Judgment in

WRIT APPEAL Nos.2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516 & 2517 OF 2013 AND 189, 275, 276, 277 OF 2014

Dated: 12.06.2014