

Supreme Court of India

C.S. Gopalakrishnan vs The State Of Tamil Nadu on 9 May, 2023

Author: Dinesh Maheshwari

Bench: Dinesh Maheshwari, Sanjay Kumar

REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.5692-5695 OF 2021

C.S. GOPALAKRISHNAN ETC.

..... Appellants

Vs.

THE STATE OF TAMIL NADU & OTHERS

..... Respondents

WITH

CIVIL APPEAL NO. 5697 OF 2021

JUDGMENT

SANJAY KUMAR, J.

1. Past events, contextual to these appeals, being of relevance require recount at some length.

2. Long ago, the State of Tamil Nadu chose to exercise its right of eminent domain to acquire land for its harijan welfare schemes, its industrial purposes and its highways by deviating from the law and procedure prescribed in the Central legislation, viz., ‘The Land Acquisition Act, 1894’. In exercise of concurrent power under Entry 42 in List III of the Seventh Schedule to the Constitution of India, it enacted ‘The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978’; ‘The Tamil Nadu Acquisition of Land for Industrial Signature Not Verified Digitally signed by Neetu Khajuria Date: 2023.05.09 17:27:13 IST Purposes Act, 1997’; and ‘The Tamil Nadu Highways Act, 2001’. These three State Reason:

Acts stood protected, despite being repugnant to the Land Acquisition Act, 1894 [hereinafter, ‘the old LA Act’], owing to the Presidential assent that they had received on 21.07.1978, 25.05.1999 and 16.09.2002 respectively, under Article 254(2) of the Constitution. However, upon the Parliament promulgating the Right to Fair Compensation and Transparency in Land Acquisition; Rehabilitation and Resettlement Act, 2013 [hereinafter, ‘the new LA Act’], replacing the old LA Act, these State Acts were rendered void, being repugnant thereto.

3. Pertinently, Section 105 of the new LA Act provided that the said legislation would not apply or would apply with modifications to the Central Government's enactments relating to land acquisition, specified in the Fourth Schedule thereto. In an attempt to save the three State Acts, by taking a cue from Section 105 of the new LA Act, the Tamil Nadu Legislative Assembly passed Bill No. 5 of 2014 on 22.02.2014, amending the new LA Act. Thereby, Section 105-A was inserted in the new LA Act, making the provisions thereof inapplicable or applicable with modifications to the Acts relating to land acquisition in the State of Tamil Nadu, which were specified in the newly added Fifth Schedule. The three State Acts were shown in this Schedule. However, Bill No. 5 of 2014 was returned by the President of India pointing out some defects and after curing of the same, it was reintroduced as Bill No. 30 of 2014. It was then sent to the President of India for his assent and received the same on 01.01.2015. In consequence, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014 (Act No.1 of 2015), came into force with retrospective effect from 01.01.2014.

4. Act No.1 of 2015 was subjected to challenge before the Madras High Court in a batch of writ petitions. Writ Petition No.21323 of 2015 was also filed raising a challenge to the Tamil Nadu Highways Act, 2001 (for brevity, 'the Highways Act'). On the same lines, Writ Petition Nos. 26028 and 26234 of 2013 were filed assailing the validity of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (for brevity, 'the Industrial Purposes Act'), on the ground that it was ultra vires the Constitution of India and seeking a consequential direction to the authorities to drop the acquisition of the petitioners' lands thereunder.

5. In W.P.No.26028 of 2013, the consequential prayer of the two petitioners, viz. P.K. Muralidharan and V. Thirunarayanan, was to direct the authorities not to acquire their lands in old Survey No. 93/4B(3), presently Survey Nos. 93/58 and 93/59, of Pillaipakkam Village, Sriperumbudur Taluk No. 103, Kancheepuram. In W.P.No.26234 of 2013, the prayer of C.S. Gopalakrishnan, the petitioner therein, was to direct the authorities to return his land in Survey No. 92/60, Patta No.1317, Plot No. 236, Thripura Sundari Nagar, Pillaipakkam Village, Sriperumbudur Taluk. Further, V. Thirunarayanan, the second petitioner in W.P.No.26028 of 2013, also filed W.P.No.10282 of 2015 seeking a declaration that Act No.1 of 2015 was ultra vires the Constitution and a consequential direction to the authorities not to acquire his lands in Kancheepuram District. Similarly, C.S. Gopalakrishnan, the sole petitioner in W.P.No.26234 of 2013, filed W.P.No.10283 of 2015 seeking identical reliefs. These four writ petitions, along with several others, were partly allowed by a Division Bench of the Madras High Court, vide common order dated 03.07.2019.

6. The common order dated 03.07.2019 reflects that the High Court framed the following issues for consideration: -

‘1) Are the State enactments void because of inherent arbitrariness?

2) Did the President of India fail to apply his mind while granting assent to Section 105-A?

3) Did the impugned State enactments become repugnant once the Parliament 'made' the new Land Acquisition Act. If so, did the presidential assent to Section 105-A inserted by Tamil Nadu Act No. 1 of 2015 revive the three Acts?

4) Are the provisions of Section 105-A(2) and (3) mandatory, and if so, whether non-compliance with these provisions (is, sic) fatal to the validity of these enactments.'

7. As regards the first issue, the High Court noted that the validity of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, was upheld by the Supreme Court in *State of Tamil Nadu and others Vs. Ananthi Ammal and others* [(1995) 1 SCC 519] and that the Industrial Purposes Act was upheld by a Division Bench of the Madras High Court in *K. Ramakrishnan Vs. The Government of Tamil Nadu* [2007 WLR 372], wherein it was specifically held that the said enactment did not suffer from any illegality, irrationality or procedural impropriety. Similarly, the Tamil Nadu Highways Act, 2001 (for brevity, 'the Highways Act'), was upheld by the Madras High Court in *S.N. Sumathy Vs. State of Tamil Nadu and others* [2015 SCC OnLine Madras 14055]. The High Court, therefore, opined that the three State Acts could not be said to be irrational, capricious or without adequate determining principles and rejected the contention that they were liable to be invalidated on the ground of inherent arbitrariness.

8. On the second issue, the High Court held that all the material was placed before the President of India and, therefore, it could not be said that there was any non-application of mind by the President of India while granting assent. The High Court also noted that the first Bill was returned by the President pointing out some defects and it was only after the same were cured that the Presidential assent was given. The second issue was, therefore, decided accordingly.

9. Apropos the third issue, the High Court accepted the contention of the writ petitioners that, as the new LA Act received Presidential assent on 27.09.2013, all the three State Acts became void on that date itself and Act No.1 of 2015 did not have the effect of reviving these void State Acts. It was noted that Article 254(2) of the Constitution would not apply to a law already made by a State which becomes repugnant as a result of a new enactment made by the Parliament and it would not offer protection to laws made by the State before the Central legislation. The High Court opined that Article 254(2) of the Constitution required the repugnant law to be reserved for consideration afresh by the President for giving his assent thereto and, therefore, these State Acts had to receive Presidential assent in the present sense. The High Court concluded that, in order to bring an Act within the purview of Article 254(2) of the Constitution, it must be re-enacted by the State and reconsidered by the President and mere insertion of Section 105-A in the new LA Act was inadequate. The High Court, accordingly, declared the three State Acts void and held that Section 105-A did not resurrect them and was a mere dead letter.

10. On the last issue, the High Court held Section 105-A(2) and (3) to be mandatory. Holding so, the Madras High Court allowed the writ petitions to the extent indicated. However, the High Court deemed it appropriate not to reopen the acquisitions made under the State Acts, on or after 27.09.2013, where the acquired lands had already been put to use and the purpose for which the

lands were acquired had been accomplished. The High Court held that as Section 105-A, inserted in the new LA Act by Act No.1 of 2015, was rendered virtually otiose as Act No.1 of 2015 did not meet the requirements of Article 254(2) of the Constitution and did not have the effect of reviving the State Acts, the validity of Section 105-A need not be independently examined.

11. SLP (C) Nos. 2063-2066 of 2020, which were thereafter numbered as Civil Appeal Nos. 5692-5695 of 2021, arose out of the common order dated 03.07.2019 in so far as it pertained to W.P.Nos.26234 & 26028 of 2013 and W.P.Nos.10282 & 10283 of 2015 respectively. V. Thirunarayanan, the second petitioner in W.P.No.26028 of 2013, and C.S. Gopalakrishnan, the sole petitioner in W.P.No.26234 of 2013, filed the first two SLPs aggrieved by the common order to the extent that it did not hold the Industrial Purposes Act to be void on the grounds of arbitrariness and violation of Article 14 of the Constitution. The other two SLPs filed by them pertained to W.P.Nos.10282 and 10283 of 2015 respectively, relating to the validity of Act No.1 of 2015 and Section 105-A.

12. During the pendency of these SLPs before this Court, the State of Tamil Nadu again attempted to revive the three State Acts by enacting 'The Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019' (for brevity, 'the Validation Act of 2019'). This Act received the assent of the President, under Article 254(2) of the Constitution, on 02.12.2019. It came into effect retrospectively from 26.09.2013. The Validation Act of 2019 was challenged before this Court in a batch of writ petitions. By judgment dated 29.06.2021, reported in G. Mohan Rao and others Vs. State of Tamil Nadu and others [AIR 2021 SC 3126], this Court held that the said enactment was a legitimate legislative exercise which was consistent with and fell within the four corners of Article 254 of the Constitution. The writ petitions were, accordingly, dismissed.

13. It may be noted that one K.M. Vittal Babu and one T. Chinnappan had filed W.P.No.5893 of 2018 before the Madras High Court, wherein they had sought a declaration that Section 105-A inserted in the new LA Act by Act No.1 of 2015 was unconstitutional. This writ petition was also clubbed with the batch of writ petitions, which came to be disposed of by the common order dated 03.07.2019. While so, on 07.07.2021, K.M. Vittal Babu and T. Chinnappan filed I.A. No. 77573 of 2021 in SLP (C) Nos. 2063-2066 of 2020, which were numbered as Civil Appeal Nos. 5692-5695 of 2021, seeking to be impleaded therein. They stated that the provisions of the Industrial Purposes Act are in pari materia with the provisions of the Highways Act, whereunder their lands were acquired, and as there was no separate petition dealing with the validity thereof, it was just and necessary that they get impleaded in SLP (C) Nos. 2063-2066 of 2020 so as to question the pari materia provisions of the Highways Act. Their impleadment application was allowed on 09.09.2021. Surprisingly, two days later, on 11.07.2021, K.M. Vittal Babu chose to file SLP (C) Diary No. 15466 of 2021 in the context of W.P.No.21323 of 2015, referred to hereinbefore, wherein he was not a party. In his application for permission to file the SLP, he stated that W.P.No.21323 of 2015 raised a challenge to the Highways Act, which was missing in his own writ petition and he, therefore, wanted to raise that issue before this Court. He was granted leave to do so on 09.09.2021 and his SLP was numbered as Civil Appeal No. 5697 of 2021. His prayer therein is to declare the Highways Act unconstitutional and void. Thus, K.M. Vittal Babu figures as the appellant in Civil Appeal No. 5697 of 2021 and is also impleaded as a respondent in the other appeals, along with T. Chinnappan.

14. In the light of G. Mohan Rao (supra), the challenges before this Court to Act No.1 of 2015 and Section 105-A are rendered redundant. SLP (C) No. 4106 of 2020, involving such a challenge, was disposed of on 09.09.2021. Therefore, Issue Nos. 2, 3 and 4 dealt with by the High Court in the common order dated 03.07.2019 no longer require consideration on merits. In consequence, though numbered thereafter, Civil Appeal Nos. 5694 and 5695 of 2021 are infructuous and need no adjudication. The only issue left for consideration is whether the Industrial Purposes Act and the Highways Act are void owing to inherent arbitrariness and infringement of Article 14 of the Constitution. In this context, it may be noted that, in paragraph 74 in G. Mohan Rao (supra), this Court observed that the contention, based on comparative analysis of the State Acts and the new LA Act, to establish violation of the equality clause under Article 14 of the Constitution, is left open. Parties were given liberty to raise all other issues not dealt with in that judgment, in relation to the validity of the State laws, in the pending cases arising from the order dated 03.07.2019, including by getting themselves impleaded.

15. Heard Mr. Suhrith Parthasarathy, learned counsel for the appellants in Civil Appeal Nos.5692-5693 of 2021; Mr. N. Subramaniam, learned counsel, appearing for K.M. Vittal Babu and T. Chinnappan; and Mr. K.K. Venugopal, learned senior counsel, appearing for the State of Tamil Nadu and its authorities.

16. Civil Appeal Nos. 5692-5693 of 2021: The Industrial Purposes Act is founded on the premise that the State of Tamil Nadu found it expedient to make special provision for speedy acquisition of lands for industrial purposes in the State of Tamil Nadu and for matters connected therewith. The scheme therein envisages that the Government would cause a Public Notice to be given under Section 3(2) of the Industrial Purposes Act, in such manner as may be prescribed, calling upon the owner of the land and any other person, who in the opinion of the Government may be interested in such land, to show-cause, within such time as may be specified in the Public Notice, why the land should not be acquired. Section 3(3) provides that after hearing and considering the cause, if any, shown by the owner or person interested, the Government may pass an order under Section 3(1). In turn, Section 3(1) states that the Government may acquire any land required for any industrial purpose, or for any other purpose in furtherance of the objects of the Act, by publishing a Notice in the Tamil Nadu Government Gazette, specifying the particular purpose for which the land is required. Once the Notice under Section 3(1) is published in the Gazette, Section 4 states that the land would vest absolutely in the Government, free from all encumbrances, on and from the date of such publication.

17. The gravamen of the attack in the present appeals is that the Madras High Court erred in holding that the Industrial Purposes Act was not liable to be invalidated on the grounds of arbitrariness and violation of Article 14 of the Constitution. Various issues were raised in the course of arguments in this regard, citing an abundance of caselaw. However, it is an admitted fact that C.S. Gopalakrishnan purchased the land in Survey No. 92/60, Patta No. 1317, Plot No. 236, Pillaipakkam Village, Kancheepuram District, under registered sale deed dated 14.12.2012, long after initiation of the acquisition proceedings, by issuance of the Public Notice on 23.10.2007, for setting up SIPCOT Industrial Park. Similarly, V. Thirunarayanan, the other appellant, also purchased the land in old Survey No. 93/4B(3), presently Survey Nos. 93/58 and 93/59, Pillaipakkam Village, Kancheepuram

District, under registered sale deed dated 21.02.2013, well after the initiation of the aforesaid acquisition proceedings. However, the Notice under Section 3(1) of the Industrial Purposes Act was published in the Gazette only in March, 2013, after their purchase of the lands in question.

18. In the above milieu, the question that would arise is as to the locus standi of the appellants, who admittedly purchased their lands after the initiation of land acquisition proceedings, to maintain a challenge to the provisions of the Industrial Purposes Act and the proceedings initiated thereunder.

19. It is the argument of the State that such subsequent purchasers would have no right to challenge the acquisition proceedings and, in that context, maintain an attack against the legislation under which such acquisition is being made. It is further contended that, as the Section 3(1) Notice was published in the year 2013, i.e., before the coming into force of the new LA Act, determination of the compensation in relation thereto would be only on the basis of the old LA Act and not under the new LA Act.

20. Per contra, the appellants assert that they would have locus to challenge the validity of the Industrial Purposes Act, as their sale transactions were nearly 6 years after issuance of the Public Notice under Section 3(2) of the Industrial Purposes Act and any reasonable person would have a bonafide belief that such proceedings would have lapsed owing to passage of time. They also contend that as per Section 4 of the Industrial Purposes Act, the acquired land would vest in the Government only on publication of the Notice under Section 3(1) and, therefore, a sale transaction prior thereto would not be rendered void. They would argue that the State cannot freeze property rights for a period of six years by issuing a Public Notice under Section 3(2) of the Industrial Purposes Act and forgetting about it thereafter for years together. Reference is made to the judgment of the Madras High Court in Sri Venkateswara Educational and Charitable Trust Vs. The Secretary to Government of Tamil Nadu and others [Writ Appeal No. 1063 of 2012, decided on 17.10.2022], which held that in cases where compensation still needed to be determined for acquisitions made under the Industrial Purposes Act, the new LA Act would apply perforce and the base date for determining compensation would not be the date on which the Section 3(2) Notice was issued but 01.01.2014, the date on which the new LA Act came into force.

21. It may be noted that, after publication of the Notice under Section 3(1), the appellants are stated to have filed writ petitions before the Madras High Court in which orders of status quo were passed. Those cases are stated to be pending as on date. We are not concerned at this stage with the validity of individual acquisition proceedings initiated under the Industrial Purposes Act. If the validity of such acquisition proceedings is under challenge before the High Court, it is for the parties to pursue the same and invite an adjudication on merits. Issues pertaining to such individual acquisition proceedings, including quantification of compensation and other aspects based on facts, can be decided in those writ petitions and need not concern us at this stage. Presently, we are only dealing with the challenge to the validity of the Industrial Purposes Act and the Highways Act on the grounds of arbitrariness and breach of Article 14 of the Constitution and no more.

22. As regards the issue of the appellants' locus standi, that very aspect was considered by a 3-Judge Bench of this Court in Shiv Kumar and another Vs. Union of India and others [(2019) 10 SCC 229].

The question therein was whether subsequent purchasers of acquired land would be entitled to seek invalidation of the acquisition on the ground of delay under Section 24(2) of the new LA Act. The Bench held that a sale transaction, effected after the Notification under Section 4 of the old LA Act, is void and would be ineffective to transfer the land and such a sale would not clothe the subsequent purchasers with title, whereby they could claim to be in possession. It was observed that it would be profoundly unfair and unjust and against the policy of law to permit such a purchaser to claim resettlement or claim the land back, as envisaged under the new LA Act. Support in this regard was drawn from the earlier judgments in UP Jal Nigam, Lucknow, and another Vs. Kalra Properties (P) Ltd. [(1996) 3 SCC 124]; Sneh Prabha and others Vs. State of UP and another [(1996) 7 SCC 426]; Union of India Vs. Shivkumar Bhargava and others [(1995) 2 SCC 427]; Meera Sahni Vs. State (NCT of Delhi) and others [(2008) 9 SCC 177]; V. Chandrasekaran and another Vs. Administrative Officer and others [(2012) 12 SCC 133]; Rajasthan State Industrial Development & Investment Corporation Vs. Subhash Sindhi Co-op. Housing Society, Jaipur [(2013) 5 SCC 427]; and M. Venkatesh and others Vs. Commissioner, Bangalore Development Authority [(2015) 17 SCC 1]. Be it noted that, in UP Jal Nigam, Lucknow (supra), Meera Sahni (supra) and V. Chandrasekaran (supra), this Court held that such a purchaser could not challenge the acquisition and would, at best, be entitled to receive compensation.

23. As both C.S. Gopalakrishnan and V. Thirunarayanan seek to assail the validity of the Industrial Purposes Act only in the context of the acquisition proceedings initiated thereunder in relation to the lands purchased by them after issuance of the Public Notice under Section 3(2) thereof, viz., the equivalent of a Notification under Section 4 of the old LA Act, their challenge is tainted and unacceptable in its very inception. They were both subsequent purchasers and are deemed to be aware of the acquisition proceedings. In that regard, we may note that the original owners of the subject lands raised their objections in response to the Public Notice issued under Section 3(2) in the year 2007, but chose to sell their lands in 2012 and 2013. In any event, neither of these subsequent purchasers can be permitted to claim ignorance of the acquisition proceedings. In effect, the very sale transactions under which they claim title and interest in the subject lands are rendered void in the eye of law. Mere passage of time and publication of the Section 3(1) Notice after their purchase of the lands would not save their sale transactions or vest them with a right to attack the acquisition. In consequence, we find no reason to entertain their challenge to the Industrial Purposes Act on the grounds of arbitrariness and violation of Article 14 of the Constitution or their consequential challenge to the acquisition proceedings. Civil Appeal Nos. 5692-5693 of 2021 are, therefore, liable to be dismissed on this short ground.

24. Civil Appeal No. 5697 of 2021 et al: K.M. Vittal Babu and T. Chinnappan assail the common order dated 03.07.2019 passed by the Madras High Court, whereby challenge to the validity of the Highways Act, on the grounds of arbitrariness and violation of Article 14 of the Constitution, was rejected. The grievance of these two persons is with regard to the acquisition of their lands by the State of Tamil Nadu under the Highways Act. The Government of Tamil Nadu had issued GO.Ms.No.200, Highways and Minor Ports Department, dated 07.12.2011, proposing to acquire land for construction of a Flyover/Road over Bridge to replace Railway Level Crossing No. 184 in Salem. Thereafter, Public Notice dated 02.07.2016, under Section 15(2) of the Highways Act, which is the equivalent of Section 3(2) of the Industrial Purposes Act, was issued calling for objections as

to why their lands should not be acquired for the said purpose. After consideration of the objections received, Notice dated 01.02.2017 was published in the Tamil Nadu Government Gazette, under Section 15(1) of the Highways Act, which is the same as Section 3(1) of the Industrial Purposes Act. Thereupon, these two persons filed W.P.No.3276 of 2017 before the Madras High Court challenging the acquisition proceedings and status quo was ordered therein. This case is pending as on date.

25. The Validation Act of 2019 states that the provisions in the First Schedule, the Second Schedule and the Third Schedule to the new L.A. Act shall apply to land acquisition proceedings under the Highways Act. Part III of the Validation Act of 2019 pertains to the Highways Act. Section 10(1) therein states that all the provisions of the Highways Act, except the provisions relating to determination of compensation, shall stand revived with effect on and from 26.09.2013. Section 10(2) states that all rules, notifications, notices, orders, directions issued or any other proceedings initiated under the Highways Act, except those relating to determination of compensation, which were in force immediately before 26.09.2013 shall, for all purposes, be deemed to have been revived on and from 26.09.2013. Section 10(3) states that the provisions relating to determination of compensation as specified in the First Schedule; rehabilitation and resettlement as specified in the Second Schedule; and infrastructure amenities as specified in the Third Schedule to the new L.A. Act, shall apply to the acquisition proceedings under the Highways Act. Section 11 states that except as provided in the Validation Act of 2019, the provisions of the new L.A. Act shall cease to apply to any land which is required for the purposes specified in Section 15(1) of the Highways Act and any such land shall be acquired by the Government only in accordance with the provisions of the Highways Act.

26. Though Civil Appeal Nos. 5692-5693 of 2021 are liable to be dismissed on the ground of maintainability, the arguments of Mr. Suhrith Parthasarathy, learned counsel appearing therein, were adopted in toto by Mr. N.Subramaniyan, learned counsel for K.M. Vittal Babu and T. Chinnappan. This adoption of arguments is based on the premise that the provisions of the Industrial Purposes Act are in pari materia with the provisions of the Highways Act, with which they are concerned. In that view of the matter, we shall advert to the arguments advanced by both the learned counsel in the context of the Highways Act alone.

27. The Highways Act is stated to be discriminatory, both with regard to determination of compensation as well as the acquisition procedure, when compared to the new LA Act. Reference is made to the provisions of the new LA Act which require the appropriate Government to consult the local authorities in the affected area and to carry out a Social Impact Assessment Study in consultation with them. It is pointed out that a Social Impact Assessment Study Report would lapse, under Section 14 of the new LA Act, if the Preliminary Notification under Section 11 is not issued within 12 months from the date that such report is submitted, and in such an event, a fresh Social Impact Assessment Study has to be undertaken before acquisition proceedings are initiated. It is pointed out that the First Schedule to the new LA Act states that the market value of the land is to be determined as per Section 26 thereof. The proviso to Section 26(1) of the new LA Act, in turn, links the market value to the date on which the Preliminary Notification is issued under Section 11. The Notification under Section 11 of the new LA Act is equivalent to the Public Notice issued under Section 15(2) of the Highways Act. The Declaration under Section 19 of the new LA Act is on par

with the Notice published under Section 15(1) of the Highways Act.

28. In the context thereof, it is pointed out that Section 19(7) of the new LA Act prescribes the time limit of one year between the Notification under Section 11 and the publication of the Declaration under Section 19 and in the event of failure to abide by this time stipulation, the Preliminary Notification is deemed to lapse, subject to exceptions in terms of the second proviso to Section 19(7) of the new LA Act. Similarly, Section 25 of the new LA Act provides that the Award must be passed within 12 months of the Declaration under Section 19 and if not, the entire proceedings would lapse, subject to the proviso to Section 25, which entitles the Government to extend the time. However, as all these provisions do not find reflection in the First Schedule to the new LA Act, which has been extended to the Highways Act, the timelines put in place to safeguard the interests of the land owners would not be applicable to an acquisition thereunder. In consequence, there would be no restriction upon the State of Tamil Nadu to complete the exercise in a time-bound manner and compensation would be determined by taking into consideration a market value from the distant past, which would not be the case had the acquisition been under the new LA Act. In the light of the flexibility afforded to the State Government, it is argued that the market value of the acquired land would change to the detriment of the land owner.

29. It is further pointed out that the procedure prescribed in Section 28 of the new LA Act for determining the amount of compensation is not followed by the State of Tamil Nadu under the Highways Act and more particularly, the power given to the Collector under Section 28(7) of the new LA Act to take into consideration any other ground which may be in the interest of equity, justice and beneficial to the affected families. It is also their grievance that safeguards provided in the new LA Act, which are beneficial to land owners, are not available in the Highways Act, both in relation to the quantum of compensation as well as the procedure. Reference is made to Section 39 of the new LA Act, which provides for additional compensation in case of multiple displacements and it is pointed out that no such relief is provided in the Highways Act, despite multiple acquisitions for widening of highways.

30. It is contended that though the Validation Act of 2019 applies the provisions of the new LA Act to the Highways Act insofar as compensation is concerned, the selective application of the provisions of the new LA Act would result in discrimination even in the matter of compensation. It is pointed out that timelines prescribed under the new LA Act, which are not relatable to the First Schedule to the new LA Act, are not made applicable under the Validation Act of 2019 and the absence of such timelines would permit the State to peg the market value for determining compensation on a date in the remote past, thereby depriving the land owners of just and fair compensation. According to the learned counsel, though there is de jure parity between the new LA Act and the State Acts, there would actually be de facto discrimination in the payment of compensation. Reference is made to *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and others* [AIR 1965 SC 1017], *Nagpur Improvement Trust and others Vs. Vithal Rao and others* [AIR 1973 SC 689], *Union of India Vs. Tarsem Singh and others* [(2019) 9 SCC 304], *Savitri Cairae and others Vs. U.P. Avas Evam Vikas Parishad and others* [(2003) 6 SCC 39] and *The State of Madhya Pradesh Vs. G.C. Mandawar* [AIR 1954 SC 493].

31. It is asserted that there is no intelligible differentia between land owners whose lands are acquired under the Highways Act and those whose lands are acquired under the new LA Act and it would amount to an unreasonable classification if they are denied compensation on the same terms, when their lands are acquired for public purposes. An example is cited, where a person's land may be acquired under the Highways Act while his neighbour's land, which is identically situated in all respects, is acquired under the new LA Act, but they would be given compensation on different criteria owing to the absence of timelines in the Highways Act, which would permit the State to peg the market value on a past date to determine the compensation unlike the situation obtaining under the new LA Act. Reference is made to *Joseph Shine Vs. Union of India* [(2019) 3 SCC 39] to contend that when a statute is arbitrary, it would offend Article 14 of the Constitution and would require to be struck down. It is also argued that certain critical clauses pertaining to compensation, contained in Sections 27 to 30 of the new LA Act, are not brought into play in the Highways Act, as only the First Schedule to the new LA Act has been incorporated therein, causing discrimination, as land owners whose lands have been acquired under the Highways Act would not be entitled to the benefits under these provisions of the new LA Act.

32. On the other hand, Mr. K.K. Venugopal, learned senior counsel, would point out that the timelines fixed in the new LA Act are not sacrosanct as the provisions thereof permit extension of time in certain circumstances. It is pointed out that, once such an extension is granted, no outer limit is prescribed and, therefore, the argument that the new LA Act places binding temporal constraints on the State is not correct. It is pointed out that the second proviso to Section 19(7) of the new LA Act empowers the Government to extend the period of 12 months if, in its opinion, circumstances exist to justify the same and, in effect, there is no distinction between the Highways Act and the new LA Act. Reference is made in this regard to *State of Kerala and others Vs. T.M. Peter and others* [(1980) 3 SCC 554]. Reliance is placed upon the *State of Karnataka Vs. Ranganatha Reddy* [(1977) 4 SCC 471] in support of the contention that a State law enacted on a subject in the Concurrent List in the Seventh Schedule to the Constitution would stand protected after it receives the assent of the President under Article 254(2), even if it is repugnant to the Central legislation on the same subject, and it is argued that any such repugnancy would stand cured and would no longer be a ground to invalidate the Highways Act.

33. It is contended that the question of comparing the Highways Act with the new LA Act would not arise at all, as any repugnant provision in the Highways Act would continue to operate notwithstanding the contrary provision in the new LA Act, as the Validation Act of 2019, which revived the Highways Act, stood protected by the assent given by the President of India under Article 254(2). It is pointed out that the Public Notice under Section 15(2) of the Highways Act was issued on 02.07.2016 and was followed by publication of the Notice under Section 15(1) thereof on 01.02.2017, i.e., a mere 7 months later. It is argued that, even in a case where delay ensued due to factors beyond control or any other incidental reason, it would not be sufficient in itself to declare the legislation void on that short ground.

34. Having given serious and thoughtful consideration to the matter, we must first take note of certain crucial aspects that practically clinch the issue. The very foundation and basis of Article 254(2) of the Constitution is that a particular State enactment runs contra to the provisions of a

Central legislation on the same subject, but despite the same it would stand protected after it receives the assent of the President of India thereunder. Therefore, it is a foregone conclusion that disparity and discrimination would be writ large between the two enactments and aspects relating to their implementation. In such a situation, the question of comparing the two legislations, for the purpose of making out a case under Article 14 of the Constitution, would not arise. Such an exercise would be akin to comparing chalk with cheese, i.e., two essentially unequal entities.

35. Notably, in *G.C.Mandawar (supra)*, a Constitution Bench observed that it is conceivable that, when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the Court to disregard the form and treat them as one law and strike it down if, in their conjunction, they result in discrimination, but such a course would not be open where the two laws sought to be read in conjunction are by different Governments and by different Legislatures as Article 14 does not authorize the striking down of a law of one State on the ground that, in contrast with a law of another State on the same subject, its provisions are discriminatory and nor does it contemplate a law of the Centre or of the State, dealing with similar subjects, being held to be unconstitutional by a process of comparative study of the provisions thereof. The Bench pointed out that the sources of authority for the two statutes being different, Article 14 can have no application. This was the very logic that was applied by this Court in *Ananthi Ammal (supra)*, while upholding the validity of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

36. In *P. Vajravelu Mudaliar (supra)*, a Constitution Bench was dealing with an amendment to the old LA Act brought by the Madras Legislature, whereby different principles were specified for fixing compensation for lands acquired for housing schemes when compared with acquisition for other purposes. Significantly, this was not a case where Presidential assent was obtained under Article 254(2) of the Constitution. It was in those circumstances that the Bench observed upon a comparative study of the old LA Act and the Amending Act that, if a land is acquired for a housing scheme under the Amending Act, the claimant would get a lesser value than what he would get for the same land if it was acquired for a different public purpose under the old LA Act and such classification between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes would not be a reasonable one under Article 14. It was on that ground that the Bench held the Amending Act to be void, as it clearly infringed Article 14 of the Constitution. Similar was the situation in *Deputy Commissioner and Collector, Kamrup Vs. Durga Nath Sarma [AIR 1968 SC 394]* and *Nagpur Improvement Trust (supra)*, as those cases also did not involve validation of a repugnant State law under Article 254(2) of the Constitution.

37. In *Ranganatha Reddy (supra)*, a Constitution Bench of 7 Judges observed that the repugnancy, if any, between a State Act and a Central Legislation on a subject in the Concurrent List would stand cured if the State Act receives the assent of the President under Article 254(2) and such repugnancy cannot thereafter be a ground to invalidate the State Act. Again, in *Javed and others Vs. State of Haryana and others [(2003) 8 SCC 369]*, a 3-Judge Bench of this Court held that it is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though *pari materia* it may be, but enacted by the Parliament or by another State Legislature within its own power to legislate, as the sources of power are different and so do differ those who exercise the power. It was observed that two laws enacted by

two different Governments and by two different legislatures can be read neither in conjunction nor by comparison for the purpose of finding out if they are discriminatory and Article 14 does not authorize the striking down of a law of one State on the ground that, in contrast with a law of the Centre or of another State on the same subject, its provisions are discriminatory.

38. In *U.P. Avas Evam Vikas Parishad Vs. Jainul Islam and another* [(1998) 2 SCC 467], this Court was dealing with a State Act for acquisition of land for executing housing schemes. However, the compensation payable thereunder was lesser than that payable under the old LA Act. This State law was of the year 1965 and had received the assent of the President. However, the old LA Act was amended by the Land Acquisition (Amendment) Act, 1984, whereby several new provisions were inserted in the interest of the land owners, by enhancing the amount of solatium and interest. The State Act of 1965, however, remained unchanged. The High Court came to the conclusion that the land owners would be entitled to the benefit of the provisions introduced in the old LA Act by the Amendment Act of 1984. The matter thereupon came before this Court. This Court held that Section 55 of the State Act of 1965, which incorporated the provisions of the old LA Act, also intended that the amendments to the old LA Act relating to determination of compensation would be applicable to acquisition of lands under the State Act of 1965. Owing to this construction and interpretation of the statutory provision, this Court held that it would not be necessary to deal with the submission that, if the provisions of the Amendment Act of 1984 were not applicable to acquisitions under the State Act of 1965, the provisions of the old LA Act made applicable under the State Act of 1965 would be void on the ground of repugnancy under Article 254 of the Constitution. This judgment, therefore, does not aid or advance the case of the appellants.

39. Similar logic was applied by this Court in *Savitri Cairae* (supra), while dealing with the very same State Act of 1965. Noting that it provided for acquisition of land in terms of the old LA Act and by reason of the legal fiction created thereunder, this Court held that, even if the acquisition was made under the State Act of 1965, if higher amount of compensation is payable under the old LA Act, such higher amount of compensation has to be paid. Pertinently, this Court observed that, ordinarily, the equality clause enshrined in Article 14 of the Constitution cannot be invoked in the matter of enforcement of a State legislation vis-à-vis Parliamentary legislation and/or legislation of another State.

40. We are, therefore, not inclined to entertain the attack launched against the Highways Act on the strength of the so-called disparity and discrimination in the norms and procedures prescribed therein when compared with the new LA Act. In this regard, we may point out that the Highways Act in the State of Tamil Nadu stood protected even at the time the old LA Act was in force and effect, owing to the Presidential assent that it had received under Article 254(2) of the Constitution, and it continued to operate and provide altogether different yardsticks for acquisition of land and payment of compensation till the advent of the new LA Act.

41. Even otherwise, in so far as the issue of social impact assessment and the timelines for various steps in the new LA Act are concerned, this very argument was advanced in *G. Mohan Rao* (supra) and this Court observed that the whole exercise of pointing out any repugnancy after a validating Act has obtained the assent of the President is otiose for the whole purpose of Article 254(2) of the

Constitution is to resuscitate and operationalize a repugnant Act or repugnant provisions of such Act. The inescapable fact also remains that the second proviso to Section 19(7) of the new LA Act empowers the appropriate Government to extend the stipulated period of 12 months for publishing the Declaration after issuance of a Preliminary Notification if, in its opinion, circumstances exist to justify the same. The third proviso requires that any such decision to extend the period shall be recorded in writing and the same shall be notified and uploaded on the website of the authority concerned. More importantly, once such extension is granted, there is no outer limit prescribed and the proceedings would not lapse owing to a time stipulation. In T.M. Peter (supra), while dealing with the attack against absence of a time limit for Government sanction in the Town Planning Act, 1932, this Court observed that, as the scheme of the said enactment was urgent improvement of a town and it was left to the Government to deal with it with expeditious dispatch, no precise time scale could be fixed in the Act owing to the myriad factors which would have to be considered by the Government before granting sanction to a scheme and concluded by stating that the Court would not be powerless to quash and grant relief where, arbitrary protraction or malafide inaction of the authorities caused injury to an owner.

42. No doubt, the scheme of the new LA Act advocates timely measures being adopted in implementation of the acquisition and such general temporal restrictions would benefit the land owners, but the absence of such restrictions in the Highways Act may not be reason enough to invalidate it, as the very premise on which the Highways Acts was enacted by the State of Tamil Nadu was to cut down on time-consuming processes. In G. Mohan Rao (supra), this Court had noted that the letter dated 25.07.2019 written by the State of Tamil Nadu, for obtaining the assent of the President of India for the Validation Act of 2019, specifically emphasized that the three State Acts were made for the purpose of speedy acquisitions but the new LA Act rendered them repugnant. Therefore, it is not the intendment or purpose of the Highways Act that the processes for acquisition of land thereunder should be protracted or be ridden by avoidable delays.

43. A particular instance or a stray case, involving some delay in the acquisition of land under the Highways Act, may have to be dealt with on its own individual merits but that would not be sufficient in itself to invalidate the legislation itself. As noted above, K.M. Vittal Babu and T. Chinnappan have already approached the Madras High Court challenging the individual acquisition proceedings initiated against them and those cases have to be considered on their own merits and in accordance with law, without reference to this adjudication which is limited only to the attack on the validity of the Highways Act.

44. Further, there is no possibility of the State of Tamil Nadu exercising arbitrary discretion in adopting one legislation or the other for the purpose of acquiring lands, as contended by the learned counsel. Sections 3, 7 and 11 of the Validation Act of 2019 expressly exclude the operation of the new LA Act for the purposes contained in the State Acts which stood revived owing to the assent of the President of India. Therefore, the State of Tamil Nadu would be bound to apply only the Highways Act for acquiring lands for the purposes reserved thereunder.

45. On the above analysis, these appeals are bereft of merit. The Tamil Nadu Highways Act, 2001, is not liable to be invalidated on the ground that its provisions manifest discrimination or

arbitrariness when compared with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition; Rehabilitation and Resettlement Act, 2013.

The appeals are dismissed.

Parties shall bear their own costs.

.....J [DINESH MAHESHWARI]J [SANJAY
KUMAR] NEW DELHI May 9, 2023.