
(2011) 08 MAD CK 0122

In the Madras High Court

Case No : C.R.P. (MD) No's. 1525, 1914, 1965 and 1966 of 2008 and Review Application (MD) No. 76 of 2009 in C.R.P. (MD) No. 57 of 2007

Gurusankar, Kamalanathan, Sridhar and Subbulakshmi

APPELLANT

Vs

Special Tahsildar, Adi Dravidar Welfare

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 14, 18, 4, 5, 6

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 51, 7, 8

Citation : AIR 2011 Mad 224

Hon'ble Judges : M. Y. Eqbal, C.J;P. Jyothimani, J

Bench : Division Bench

Advocate : M. Vallinayagam, S. Balasubramanian, B. Jeyakumar and M.V. Venkataseshan, for the Appellant; K. Mahendran, Special Government Pleader, for the Respondent

Judgement

M. Y. Eqbal, C. J.

1. These matters have been referred to the Division Bench in view of the two conflicting decisions rendered by two single Benches of this Court on

the question of payment of court-fee in a memorandum of appeal filed u/s 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes

Act, 1978.

2. One of the Hon'ble Judges (S. Nagamuthu, J.) in the case of Ramaih and Ors. v. Special Tahsildar, Adi Dravidar Welfare, Cheranmadevi

reported in 2008 (1) C.T.C. 316, expressed the view that court-fee payable in an appeal u/s 9 of the Tamil Nadu Acquisition of Land for Harijan

Welfare Schemes Act, 1978 shall be only under Article 3, Schedule II of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and not u/s

51 of the said Act.

3. Another Hon''ble Judge (R. Sudhakar, J.) in *Gunasekar and Ors. v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli* reported in 2008 (2)

C.T.C. 595, has expressed the view that the appropriate court-fee to be paid for filing an appeal u/s 9 of the Tamil Nadu Acquisition of Land for

Harijan Welfare Schemes Act, 1978 against the order of determination of compensation shall be as provided u/s 51 of the Tamil Nadu Court Fees

and Suits Valuation Act.

4. In view of these two conflicting decisions, the matter has been placed before us to set the issue at rest.

5. In the case of *Ramaih and Ors. (supra)* the learned single Judge, after considering the relevant provisions of the Tamil Nadu Acquisition of Land

for Harijan Welfare Scheme Act, 1978 ("the Act" in short) and also various other Acts, came to the following conclusion:

32. To apply Section 51 of the Court-Fees Act, it should be satisfied that the Appeal is against an order relating to compensation. Since, as I have

held that what is challenged by way of Appeal u/s 9 of the Harijan Welfare Act, is neither an order nor an award, Section 51 of the Court-Fees

Act, has got no application in this case. Similar view has been taken by the learned Judge in the above cited case also.

...

36. If this principle is applied to the provisions of the Harijan Welfare Act, when the Authority determines the amount u/s 7 of the Act, claimant is

not put in the position of the Plaintiff. u/s 7 of the Harijan Welfare Act, determination is made by the authority himself and it is not done either by

the Arbitrator or by the Court who shall consider the claims of the rival parties to determine the amount. So, as per the above principle laid down

by the Hon''ble Supreme Court, for the amount of compensation to become either an award or an order, it should be passed by an independent

Agency like an Arbitrator or court after hearing both the claimant's case and that of the authority who has acquired the land. Since that is not done,

u/s 7 of the Harijan Welfare Act, I have to necessarily hold that at no stretch of imagination, determination of amount made u/s 7 of the Harijan

Welfare Act, is either an award or an order so as to fall within the ambit of Section 51 of the Court-Fees Act. It is also to be remembered that a

Division of this Court in *The Special Tahsildar (Land Acquisition) Krishna Water Supply Project Scheme, Tiruvallur v. G. Natesan and 13 others*,

2000 (4) CTC 440, has also taken a similar view that a reference u/s 18 of the Land Acquisition Act, is not an Appeal and therefore, Section 51

of the Court-Fees Act is not applicable.

6. In *Gunasekar's case (supra)*, another Hon'ble Judge, while differing with the view taken in *Ramaih's case (supra)* came to the following

conclusion:

23. While interpreting the various provisions of Act 31 of 1978, the Supreme Court, clearly holds that every person interested in such land is

entitled to receive compensation in terms of Section 6 of the Act 31 of 1978. In paragraph 10 it is stated that what is payable as compensation is

the market value of land as on the date of Notification issued u/s 4(1). Again in paragraph 12 referring to Section 7 as a whole, it is held that the

amount payable to person interested is compensation determined u/s 7 after an enquiry. Further, in paragraph 12 it has been clearly held that after

enquiry the prescribed authority is obliged under Sub-section (2) of Section 7 to award as compensation the amount which will be the market

value and an additional 15% solatium. Therefore, the Apex Court comes to the conclusion that what the person interested in the land acquired is

entitled to receive is compensation. While upholding the Section 7 of the Act 31 of 1978, the Supreme Court holds that the amount payable in

respect of the land acquired is the market value on the date of publication of Notification u/s 4(1) of the Act and the amount payable is referred to

as compensation, which is determined, inter alia, based on the market value of the land pursuant to an enquiry and the evidence as may be

produced by the person interested.

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25. In paragraph 14, the Supreme Court makes a clear distinction between a reference u/s 18 of the Land Acquisition Act, 1874 and the

award/order u/s 7 against which an appeal is prescribed u/s 9 of the Act 31 of 1978. It further held that evidence produced by the person

interested before the authority becomes part of the record of the court in appeal u/s 9 of the Act 31 of 1978, whereas under the Land Acquisition

Act, the compensation has to be established in the Reference Court. The

Supreme Court clearly holds that the amount determined under the Act 31 of 1978 is compensation and the determination u/s 7(2) is an award after full-fledged enquiry. The Rules provide for the procedure for such determination. Rule 4 provides the method for determination of market value of the land. Rule 5 provides the procedure for determination of the amount. The land owner has got a right to let in evidence and establish his claim and if aggrieved by the determination, appeal against the award granting compensation for the land acquired. A clear distinction has been drawn between the provisions of the Central Act, Land Acquisition Act and Act 31 of 1978, the State Act. The Supreme Court clearly comes to the conclusion that what is filed u/s 9 is an appeal against the award. Therefore, the amount determined and payable by the competent authority is compensation and the order passed is an award/order subject to appeal at the instance of the aggrieved land owner. In view of the above stated legal position as held by the Apex Court, there can be no hesitation to come to the conclusion that an aggrieved land owner or person interested while filing an appeal u/s 9 of the Act 31 of 1978, seeking enhancement of the compensation amount being the difference between the amount determined and the amount claimed in appeal, is therefore liable to pay court fee u/s 51 of the Court Fee Act.

7. Mr. Vallinayagam, learned Counsel for the Petitioners, while comparing the provisions of the Land Acquisition Act, 1894 with the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, firstly submitted that the determination of compensation u/s 7 of the Tamil Nadu Act is akin to the compensation offered by the Collector under the Central Act and therefore, such determination of compensation cannot be held to be an order against which an appeal will lie, attracting the provisions of Section 51 of the Tamil Nadu Court Fees and Suits Valuation Act. According to the learned Counsel, the court fee u/s 51 is payable under all the enactments relating to land acquisition passed before the introduction of the Tamil Nadu Court Fees and Suits Valuation Act, only if it is against the order passed by the reference court or against the order passed by the arbitrator or by any judicial or quasi-judicial authority. The learned Counsel further submitted that a decision in respect of a dispute between two parties by an adjudicating authority alone can be termed as an order. According

to the learned Counsel, a decision by a person, what he should do against another by taking into consideration the various facts for determining a subject, may be a decision, but not an order. The learned Counsel also submitted that the determination of the value of the land by the public authority by following Section 7(3) read with Rules 4 and 5 under the Act is not proper compliance with the requirement of a decision, so as to be termed as an order or adjudication. Merely because the word "appeal" is used in Section 9 of the Act for a proceeding initiated by a person who is aggrieved by the amount determined by the authority, it will not become an appeal in the eye of law. According to the learned Counsel, an appeal is one which is filed before a higher court against the decision by an inferior court.

8. Before answering the questions raised in these cases, we would first like to discuss the relevant provisions of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. The Act was enacted for the purpose of acquisition of land for extending certain welfare schemes to the Harijans in the State of Tamil Nadu. The term "Harijan Welfare Scheme" has been defined u/s 3(g) of the Act, which means any scheme for provision of house-sites for Harijans, for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans. Section 4 of the Act confers a power on the District Collector to acquire any land under this Act, if the Collector is satisfied that such land is required for the purpose of any such Harijan welfare scheme. Section 4 of the Act reads as under:

4. Power to acquire land. ? (1) Where the District Collector is satisfied that, for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under Sub-section(1), the District Collector or any officer authorised by the District Collector in this behalf shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to

show cause why it should not be acquired.

(3) (a) The District Collector may, where he has himself called upon the owner or other person to show cause under Sub-section(2), pass such

orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under Sub-section (2), the

officer so authorised shall make a report to the District Collector containing his recommendations on the cause as shown for the decision of the

District Collector. After considering such report, the District Collector may pass such orders as he may deem fit.

9. The land acquired in the manner provided u/s 4 above shall vest with the Government free from all encumbrances, as provided u/s 5 of the Act,

which is quoted hereinbelow:

5. Land acquired to vest in Government free from all encumbrances. ? When a notice under Sub-section (1) of Section 4 is published in the

District Gazette, the land to which the said notice relates shall, on and from the date on which the notice is so published, vest absolutely in the

Government free from all encumbrances.

10. According to Section 6 of the Act, every person having any interest in any land acquired under the said Act shall be entitled to receive an

amount in the manner provided under the Act. Section 7 lays down the provision for the determination of compensation, which is worth to be

quoted herein under:

7. Determination of amount. ? (1) The amount payable in respect of any land acquired under this Act shall be the market value of such land on the

date of publication of the notice under Sub-section(1) of Section 4.

(2) In addition to the market value of the land as provided above, the prescribed authority shall, in every case, award a sum of fifteen per centum

on such market value as solatium in consideration of the compulsory nature of the acquisition.

(3) The prescribed authority shall, after holding an enquiry in the prescribed manner, determine, by order, the amount payable under Sub-section

(1). A copy of the said order shall be communicated to the owner of such land and every person interested therein.

11. Section 8 of the Act provides that the authority, while determining the amount u/s 7, shall not take into account the following factors:

- (a) The degree of urgency which led to the acquisition;
- (b) Any disinclination of the person interested to part with the land acquired;
- (c) Any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;
- (d) Any damage which is likely to be caused to the land acquired, after the date of publication of the notice under Sub-section (1) of Section 4, by or in consequence of the use to which it will be put;
- (e) Any increase in the value of the land acquired likely to accrue from the use to which it will be put when acquired;
- (f) Any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;
- (g) Any increase to the value of the other land by reason of the use thereof in a manner which is detrimental to the health of the occupants of the land or to the public health; and (h) Any outlay or improvement, on or disposal of, the land acquired, commenced, made or effected without the sanction of the prescribed authority after the date of the publication of the notice under Sub-section (1) of Section 4.

12. The above mentioned five sections, i.e., Sections 4 to 8 of the Act, can be divided into two parts. The first part, viz. Sections 4 and 5 relate to acquisition of the land and the second part, viz. Sections 6 to 8 deal with determination of the compensation, which a person is entitled to get for the acquisition of the land.

13. As noticed above, Section 4 of the Act empowers the District Collector to acquire the land if he is satisfied that it is necessary to do so for the purpose of providing a Harijan welfare scheme. After having been satisfied with the purpose of such acquisition, he shall publish a notice in the District Gazette to the effect that it has been decided to acquire the land. But, before doing that, Sub-section (2) of Section 4 mandates upon him or the officer authorised by him to call upon the owner or any other person who may be interested in such land, to show cause as to why it should not be acquired. On receipt of the objection from the owner or the person interested in the said land, the District Collector shall pass such order as he may deem fit. In cases where the officer authorised by the District Collector

has called upon the owner or the other person to show cause, then such Officer, on receipt of the objection, shall submit a report to the District Collector containing his recommendation on the objection raised by the person interested in the land. After considering such report, the District Collector will pass such order as he may deem fit.

14. It is, therefore, clear from the provisions of Section 4 of the Act that before publishing the notice in the District Gazette for acquisition of the

land, the procedure provided under Sub-sections (2) and (3) of Section 4 of the Act shall have to be complied with by the District Collector. It is

only after complying with the mandatory requirement, if the notice for acquisition is published in the District Gazette, then the land so notified will

vest with the Government free from all encumbrances, as contemplated u/s 5 of the said Act.

15. Now comes the second stage regarding determination of compensation payable to the owner of the land or the person interested therein. As

per Section 6 of the Act, every person having any interest in any land acquired under the said Act shall be entitled to receive compensation. What

is the amount payable to the person interested shall be determined in the manner provided u/s 7 of the Act, as quoted hereinbefore.

16. Section 7 of the Act consists of three Sub-sections. Sub-section (1) provides that the amount payable in respect of a land acquired shall be the

market value of the land on the date of publication of the notice under Sub-section (1) of Section 4 of the Act. In addition to that, the land holder

will also get a solatium on such market value of the land at the rate of 15%, as provided in Sub-section (2). Sub-section (3) makes it mandatory

for holding an enquiry by the prescribed authority for determining the compensation payable to the owner of the land or the person interested

therein. After determining the amount, the prescribed authority shall communicate the same to the owner of the land or every person interested

therein. Necessarily, therefore, the enquiry under Sub-section (3) of Section 7 of the Act shall be, after giving notice to the owner and other

persons interested in the land and after considering their claims for compensation, on the basis of the evidence adduced by them. It is further clear

from Sub-section (3) that the prescribed authority shall determine the compensation payable by passing a reasoned order.

17. Section 9 of the Act contemplates filing of appeal against an order determining the compensation payable u/s 7 of the Act. Section 9 reads as under:

9. Appeal against order of amount determined.? Any person who does not agree to the amount determined by the prescribed authority under Sub-section (2) of Section 7, may prefer an appeal to the Court within such period as may be prescribed.

18. One important section which needs to be considered is Section 14 of the Act, which confers the power to the prescribed authority in relation to determination of the amount payable as compensation. Section 14 reads as under:

14. Power of prescribed authority in relation to determination of amount.?(1) The prescribed authority may, for the purpose of carrying out the provisions of this Act, by order, require any person to furnish such information in his possession relating to any land which is acquired under this Act.

(2) The prescribed authority shall, while holding an enquiry under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act v. of 1908) in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any Court or office;
- (e) issuing commission for examination of witnesses.

19. From the aforesaid provision, it is further clear that the prescribed authority, while determining the amount payable to the owner of the land or the person interested therein, shall exercise all the powers of a civil court trying a suit under the CPC in the matter of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, reception of evidence on affidavits, requisitioning any public record from any Court or office and issuing commission for examination of witnesses.

20. As far as the validity of the aforesaid Act of 1978 is concerned, when the Act came to be challenged before this Court, the same was declared

ultra vires by this Court on the ground that the Act is violative of Article 14 of the Constitution of India, on a comparison thereof with the

provisions of the Land Acquisition Act, 1894. The matter went in appeal to the Supreme Court in the case of State of Tamil Nadu and Others Vs.

Ananthi Ammal and Others, , the Supreme Court reversed the judgment of the High Court and declared the Act intra vires Article 14 of the

Constitution of India except Sub-section (1) of Section 11 of the Act. The Supreme Court, in the aforesaid decision, discussed in detail the

relevant provisions of the Act. Their lordships observed thus:

12. Sub-section (1) of Section 7, as aforesaid, states that the amount payable in respect of the land that is acquired under the said Act shall be its

market value on the date of publication of the notice u/s 4(1). Sub-section (2) of Section 7 states that, in addition to the market value of the land,

the prescribed authority shall in every case award a sum of 15 per centum on such market value as solatium in consideration of the compulsory

nature of the acquisition. Sub-section (3) of Section 7 states that the prescribed authority shall, after holding an enquiry in the prescribed manner,

determine by order the amount payable under Sub-section (1) and a copy of the said order shall be communicated to the owner of such land and

every person interested therein. The purport of Section 7, read as a whole, is that the market value of the land is payable as compensation and

Sub-section (3) states that the market value shall be determined after holding an enquiry in the prescribed manner. Necessarily, that enquiry

contemplates notice to the owner and other persons interested in the land and consideration of their claims for compensation and the basis thereof,

namely, the evidence they adduce. Upon determination of the market value of the land after enquiry, the prescribed authority is obliged under Sub-

section (2) of Section 7 to award as compensation for the acquisition the market value and an additional 15% as solatium.

13. An appeal is prescribed u/s 9 to the court by any person who does not agree with the amount determined by the prescribed authority ""under

Sub-section (2) of Section 7"". It was argued that the appeal was limited to the award of solatium and that, therefore, there was no appeal against

the determination of market value and no reference to the court in that behalf in the manner of Section 18 of the Land Acquisition Act. We do not

think that Sections 7 and 9 may be so read as to render Section 9 an absurdity. As aforesaid, it is the obligation of the prescribed authority under

Sub-section (2) of Section 7 to award the market value of the land plus 15% as solatium. The appeal contemplated by Section 9 is, therefore, in

respect of the award in respect of the land which comprises its market value and solatium.

14. That no reference as in Section 18 of the Land Acquisition Act in regard to the amount of compensation for land that is acquired is provided

for does not, in our view, make the said Act unreasonable. Under the provisions of the Land Acquisition Act the award is no more than an offer. If

the landowner or other person interested in the land does not accept the offer, Section 18 gives him the right of having the compensation amount

decided by the court. (See *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, . In the reference court

compensation has to be established. (See *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, . The record before the Collector does not

ipso facto become the record of the reference court. In the case of the said Act an appeal is provided u/s 9 from the award, that is, the market

value of the land and solatium, u/s 7. The market value is required to be determined, by reason of Sub-section (3) of Section 7, upon an enquiry as

hereinabove explained. The landowner or other person interested in the land has, therefore, the opportunity to establish its market value before the

prescribed authority. Such evidence as he places before the prescribed authority becomes a part of the record of the court in appeal u/s 9. The

court in appeal u/s 9 would also, in appropriate cases, have the right to call for additional evidence.

21. The Supreme Court, after discussing all the relevant provisions, had come to the conclusion that what is paid to the persons who are interested

in the land acquired is by way of compensation, which shall be according to the market value of the land as on the date of the notification u/s 4(1)

of the Act. The Supreme Court further held that the prescribed authority, after holding an enquiry, shall determine the compensation payable to the

person interested in the land. We shall, therefore, proceed on the basis that the prescribed authority shall determine the amount of compensation

payable to the person interested after holding an enquiry as contemplated u/s 7 read with Section 14 of the Act. Thus, it can be safely held that the

order determining the compensation passed by the prescribed authority u/s 7 of the Act shall not be similar to the compensation offered by the

District Collector under the Land Acquisition Act, 1894. As noticed above, the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes

Act, 1978 is a special enactment formulated by the State of Tamil Nadu under a special scheme.

22. From a reading of the Bill introduced in the Tamil Nadu State Legislative Assembly, it is evidently clear that the legislation was to be made for

acquisition of land under the Harijan Welfare Scheme. The Statement of Objects and Reasons as contained in the Bill reads as under:

STATEMENT OF OBJECTS AND REASONS

Provision of house-sites, pathways, burial grounds or any other amenities for the benefit of Harijans is a socio-economic measure and the necessity

to provide them needs no emphasis. This Government find that the existing Land Acquisition Act (Central Act 1 of 1894) does not help achieving

this object in a short period as there are number of provisions in the Act which are time-consuming. This Government is, therefore, of the view that

it is necessary to quicken the process of land acquisition by conferring powers to prescribed officers and also making provision for payment of

compensation in instalments for phasing the financial commitment of the Government. This Bill seeks to achieve the above objects.

Similarly, the Financial Memorandum annexed with the Bill, which was placed before the Legislative Assembly, is quoted hereinbelow:

FINANCIAL MEMORANDUM The Bill provides for the payment of compensation for acquisition of land under the Harijan Welfare Schemes

to provide house-sites, burial and burning grounds, and any pathways leading to such dwelling houses or to burial and burning grounds for the

Harijans and for payment of compensation for the lands acquired.

2. The legislation, therefore, involves expenditure from the Consolidated Fund of the State. It is not, however, possible to estimate at this stage

with any degree of accuracy the expenditure to be incurred on this account.

23. It is, therefore, clear that Act 31 of 1978 is a Special Act enacted by the State Legislature, for the benefit of Harijans as a socio-economic

measure, to provide them with house sites, burial and burning grounds, and pathways leading to their dwelling houses. In Section 20 of the said

Act, it is made clear that the provisions of the Land Acquisition Act, 1894 shall not apply to any land acquired under this Act. Section 20 of the

Act reads as under:

20. Land Acquisition Act not to apply. ? Save as otherwise provided in this Act, the provisions of the Land Acquisition Act, 1894 (Central Act I

of 1894) shall cease to apply to any land which is required for the purpose specified in Sub-section (1) of Section 4 and any such land shall be

acquired by the Government only in accordance with the provisions of this Act.

24. Section 21 of the Act speaks about the over-riding effect, which any other law for the time being in force has, on the instant Act. Section 21 is

also worth to be quoted, which reads as under:

21. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in

force, or any custom usage, or contract or decree or order of a Court or other authority.

25. From a collective reading of the aforesaid provisions of the Act, it is equally clear that Act 31 of 78 is a self-contained Act. As noticed above,

for the purpose of determining the amount of compensation payable to the owner or person interested as per Section 7 of the Act, the prescribed

authority shall determine the amount payable by passing an order after holding an enquiry in the prescribed manner.

26. The procedure and the manner for determination of the amount payable as compensation to the owner of the land or any person interested

therein has been prescribed in Rule 5 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 (in short ""the Rules,

1975""). The said Rule reads as under:

5. Procedure for determining the amount:

(i) Immediately after the publication of the notice under Sub-section (1) of Section 4 of the Act in the District Gazette by the District Collector, the

prescribed authority shall serve a notice in Form III to the owner and to all persons interested to appear before him on a day to be specified which

shall not be earlier than fifteen after the publication of notice under Sub-section (1) of Section 4 of the Act for, enquiry. The notice shall also be

displayed at prominent places or near the land under acquisition.

(ii) On the day specified or on any other day to which the enquiry is to be adjourned, the prescribed authority shall proceed to inquire into the

objections which the owner or any person or persons interested may raise in regard to the extent, value of the land and the nature of interest of the

different claimants to the land and shall determine by order which shall be in Form IV under his hand of ?

(a) the true owner of the land;

(b) market value of the land and solatium; and

(c) the apportionment of the amount payable among all the persons known or believed to be interested in the land of whom or of whose claims he

has information, whether or not they have appeared before him. The prescribed authority shall state specifically the particulars of apportionment

wherever necessary.

27. The aforesaid rule prescribes a full-fledged enquiry by the prescribed authority, and before determining the amount of compensation, the

prescribed authority shall invite the objections from the owners or any persons interested, hear their objections, collect all the evidence relating to

the value of the land and the nature of interest of the different claimants and thereafter, pass orders determining the amount payable as

compensation to the owners or the persons interested.

28. In Ramaiah's case (supra), the learned single Judge, on a comparison of the provisions of the State Act of 1978 with the Central Act of 1894,

has come to the conclusion that the determination of compensation by the prescribed authority u/s 7 is neither an order nor an award and therefore,

Section 51 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 has got no application. With due respect, we totally disagree with the

conclusion arrived at by the learned single Judge.

29. As noticed above, the prescribed authority, which is a statutory authority, has been conferred with a power to determine the amount of

compensation payable after holding a full-fledged enquiry, and for that purpose, the prescribed authority shall exercise all the powers of a civil

court trying a suit under the CPC and in exercise of that power, the prescribed authority can issue summons, enforce the attendance of any person

and examine him on oath, require discovery and production of documents, receive evidence on affidavits, make requisition for public records from court or office, and issue commissions for examination of witnesses. Hence, the order passed by the prescribed authority u/s 7 of the Act is an order having the force of law.

30. While distinguishing the expression "determination" with "order", the Supreme Court, in the case of *Jaswant Sugar Mills Ltd., Meerut Vs.*

Lakshmichand and Others, , observed that the expression "determination" signifies an effective expression of opinion, which ends a controversy or

a dispute by some authority to whom it is submitted under a valid law for disposal. The expression "order" must have also a similar meaning except

that it need not operate to end the dispute. "Determination" or "order" must be judicial or quasi-judicial; purely administrative or executive

discretion, is not contemplated to be made the subject-matter of an appeal to the Supreme Court.

31. A Constitution Bench of the Supreme Court, in the case of *Province of Bombay Vs. Kusaldas S. Advani and Others*, , was considering a case

under the Bombay Land Requisition Ordinance, 1947 and the power exercised by the authority under the said Ordinance. Their lordships

observed that when the law under which the authority is making a decision itself requires a judicial approach, the decision will be quasi-judicial.

Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision, the well recognised principles of

approach are required to be followed. In paragraph 173 of the judgment, their lordships have observed thus:

What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are:

(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party

under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each

other, there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the

decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially

affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

32. In *R. v. Electricity Commrs.*, (1924) 1 KB 171: 1923 ALL ER Rep 150: 93 LJKB 390 (CA), Atkin, L.J. (as he then was), observed that

when any body of persons having the legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, such

body of persons is a quasi-judicial body and the decision rendered by them is a quasi-judicial decision. In the said decision, there was no contest

or lis between the two contending parties before the Commissioner. The Commissioner, after making an enquiry and hearing the objections, was

required to pass an order. In a nutshell, what was held in the aforesaid decision was, where a statutory authority is empowered to take a decision

which affects the rights of persons and such an authority is, under the relevant law, required to make an enquiry and hear the parties, such authority

is quasi-judicial and the decision rendered by it is a quasi-judicial act.

33. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , the Supreme Court, while considering the power of the Selection Board

constituted under the All India Services Act, 1951, the Indian Forest Service (Recruitment) Rules, 1966 and the Indian Forest Service (Initial

Recruitment) Regulations, 1966, discussed the distinction between an "administrative power" and "quasi-judicial power". Their lordships observed:

13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining

whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons

on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the

manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration.

Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the

jurisdiction of the administrative bodies is increasing at a rapid rate. The concept

of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker C.J., in *Regina v. Criminal Injuries Compensation Board Ex parte Lain*, (1967) 2 QB 864 at p.881 are instructive:

With regard to Mr Bridge's second point I cannot think that Atkin L.J., intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the *Electricity Commissioners* case the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The Commissioners nevertheless were held amenable to the jurisdiction of this Court. Moreover, as can be seen from The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court, later its ambit was extended to statutory tribunals determining a *lis inter partes*. Later again it extended to cases where there was no *lis* in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, See *Reg. v. Manchester Legal Aid Committee, Ex parte R.A. Brand & Co. Ltd.*, (1952) 2 QB 413 to cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-

judicial character. In such a case this Court has jurisdiction to supervise that process.

We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a

public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act

judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this Court. It is, as Mr Bridge said,

"a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown." It is clearly,

therefore, performing public duties

34. In *Indian National Congress (I) Vs. Institute of Social Welfare and Others*, , a question came up before the Supreme Court as to whether the

Election Commission of India, u/s 29-A of the Representation of the People Act, 1951, has the power to de-register or cancel the registration of

the political parties on certain grounds and whether the Election Commission, in exercise of its power, acts administratively or quasi-judicially. In

that decision, their lordships, after following the decisions referred to hereinabove, held as under:

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforesaid

decisions are these:

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis

or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under

the statute, the decision of the said authority is quasi-judicial.

35. In the light of the law discussed hereinbefore, we have no hesitation in holding that the determination of the amount of compensation payable to

the owner of the land or the person interested therein by the prescribed authority u/s 7(3) of Act 31 of 1978 is an order having the force of an

award and not merely an offer of compensation by the prescribed authority. Hence, such an order determining the compensation can be challenged

only by preferring an appeal as provided u/s 9 of Act 31 of 1978.

36. Now, the only question that remains to be answered is as to the amount of

court-fee payable on the memorandum of appeal filed against an order relating to compensation. In this connection, Section 51 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is quoted hereinbelow:

51. Fee on memorandum of appeal against order relating to compensation.?The fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the Appellant.

37. The aforesaid provision makes it clear that in case of an appeal filed against an order relating to compensation for the acquisition of the property, the court-fee payable shall be computed on the difference between the amount awarded or determined and the amount claimed by the Appellant.

38. A similar provision finds place in Section 8 of The Court Fees Act, 1870 (Central Act), which reads as under:

8. Fee on memorandum of appeal against order relating to compensation.? The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act, for the time being in force the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the Appellant.

This section also relates to the provision with regard to calculation of court-fee in an appeal against an order awarding compensation under any Act for the time being in force in respect of acquisition of a land for public purposes.

39. In view of our discussion hereinbefore, we conclude and hold that the law has not been correctly decided in Ramaih and Ors. v. Special

Tahsildar, Adi Dravidar Welfare, Cheranmadevi reported in 2008 (1) C.T.C. 316 and the same stands over-ruled. The reference is answered

accordingly. Consequently, all these civil revision petitions and review are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.