

(1995) 01 MAD CK 0090

In the Madras High Court

Case No : Writ Petition No's. 16872 of 1993 and 5895 to 5898, 6023 to 6026 and 6268 to 6272 of 1994

Madras Metropolitan Development Authority

APPELLANT

Vs

The Special Tahsildar, Land Acquisition, MMDA and Others

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 20

Citation : (1995) 1 CTC 229 : (1995) WritLR 10

Hon'ble Judges : AR. Lakshmanan, J;Abdul Hadi, J

Bench : Division Bench

Advocate : A.L. Somayaji, for A. Chellakumar, G. Dorairaj and G.A. Baskara Rajan, for the Appellant; V. Dhanapathy, Addl. Govt. Pleader (Writs), K.T. Paul Pandian, for G. Jermiah, M.S. Subramanian and C.S. Prakash Rao, K. Alagirisamy A.S. Vijayaraghavan, D. Sivakumar, M.S. Umapathy and Muthu Durai, for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, J.—All the above Writ Petitions were filed by the Madras Metropolitan Authority, in short MMDA, to call for the records of the Subordinate Judge of Tiruvellore relating to the various L.A.O.Ps. and to quash the Award and set aside the same as illegal. It is not in dispute that the MMDA, which is the local authority under the Act, is the requisitioning body for the acquisition of the lands in question. They sent proposals to the Government of Tamil Nadu for acquisition of certain lands under the provisions of the Land Acquisition Act for the purpose of establishing Bus and Truck Terminal in the area in question. The compensation has to be paid for the land acquired only by the petitioner out of the project fund, even though it has been mentioned in Section-6 Declaration that the Compensation would be awarded from and out of public funds. It is the specific case of the petitioner that it is only the funds of the petitioner that is to be paid as compensation. The Land Acquisition Officer has fixed compensation at

Rs. 30/- per cent, on the basis of revenue records and guide line value of the area in question. The land owners filed applications to the Land Acquisition Officer for reference u/s 18 of the Land Acquisition Act of 1894. Accordingly Reference was made to Sub Court. Tiruvellore, Chingleput District and the Sub Court, Tiruvellore enhanced compensation from Rs. 30/- per cent awarded by the Land Acquisition Officer to Rs. 1500/- per cent (in W.P.No. 5895 of 1994). Likewise, the Sub Court enhanced the compensation various L.A.O.Ps. According to the petitioner, no opportunity was given to the petitioner before the enhancement of compensation and the compensation has been enhanced arbitrarily without observing the provisions of the Land Acquisition Act and the rules thereunder. It is contended that the petitioner for whom land was sought to be acquired by the Government, is entitled to notice from the Sub Court u/s 20(d) of the Land Acquisition Act amended by Tamil Nadu Act 14 of 1990. The present Sub-clause (d) of Section 20 reads as follows:-

"If the acquisition is not made for the Government, the person or authority for whom it is made"

In view of the present amendment, the petitioner contended that the petitioner for whom the acquisition was made is entitled to notice from the Court u/s 20(d) of the Act. It is also stated that according to Section 20(d) of the principal Act as amended by Section 2, shall apply also to all proceedings pending before any Court, on the date of the commencement of this Act. Therefore, it is contended that on the date of commencement of the Amendment Act 14 of 1990 proceedings were pending before Sub Court, Thiruvellore and therefore, the Act as amended by the Tamil Nadu Amendment Act 14 of 1990 should be applied, and if applied, it would follow that the petitioners are necessary parties in the proceedings before the Sub Court. It is also contended that the petitioners cannot take a direct or active part and seek reduction of compensation amount in the Appeal before the High Court that may be filed by the State Government and as per Section 18 there can be two parties to the reference, i.e: Special Deputy Collector and the claimant who has raised the objection to the award. The person for whom the land is acquired has no locus standi to demand a reference u/s 18 and he can only appeal and adduce evidence for the purpose of determining the amount of compensation. Hence the petitioners cannot seek intervention in the appeal and advance independent argument to assail the correctness of the Award passed by the Civil Court. Since the petitioners have no other alternative remedy, they have to invoke the Writ Jurisdiction for issuance of a Writ of Certiorari to quash the award in question as illegal and non est in law.

2. Similar contentions have also been raised in the other connected writ petitions.

3. Counter-affidavits have been filed by the contesting respondents/land owners. According to the land owners, the acquisition of lands in question was proposed, initiated and acquired for the Government and not for MMDA as represented. According to the land owners, the compensation for the lands to be acquired, was to be funded by the Government and hence the acquisition of the lands was

for the Government and not for the MMDA as stated in the affidavit. Therefore, it is contended by some of the land owners that the petitioner-MMDA would not be entitled to any notice from the Court under the Land Acquisition Act in the proceedings for enhancement of the compensation. Even otherwise, the petitioner has an alternate remedy by way of appeal is available, the writ petitions are not maintainable. Some of the land owners have contended that the petitioner cannot be allowed to contend that it was not aware of the pendency of the proceedings before the Sub Court in as much as the Special Tahsildar, MMDA, is actually deputed to the petitioner for the purpose of carrying out acquisition proceedings and therefore, the failure of the petitioner in not adducing evidence before the 2nd respondent is nothing but negligence. A right of appeal is conferred on the petitioner u/s 50(2) of the Act and the petitioner not having availed of the same, cannot now complain that it had no notice of the proceedings before the second respondent and therefore, the petitioner cannot take undue advantage that a notice had not been served on it. The non-issuance of a notice u/s 20(d) of the Act would only be material if the petitioner can establish that it did not have any knowledge of the acquisition proceedings including the reference u/s 18 of the Act. The petitioner cannot deny knowledge of the entire proceedings as the 1st respondent Special Tahsildar is none other than an officer of the M.M.D.A. and his office is located in the petitioner's own office premises. Hence the petitioner cannot for a moment allege that it was not aware of the pendency of the proceedings before the second respondent. It was also contended that the writ petitions are liable to be dismissed on the ground of laches since the award was passed on 20-1-1993 and the writ petitions were filed in March, 1994.

4. The land owner in W.P.No. 6023 of 1994 contended that the entire compensation amount was to be paid only by the Government and not by M.M.D.A., and that Section 4(1) Notification as well as the Declaration u/s 6 would clearly show the above and therefore, the acquisition was not for M.M.D.A. but for a public purpose by the Government. The M.M.D.A. not being a requisitioning body in respect of the acquisition in the present case, the petitioner cannot claim notice to be given u/s 20(d) of the Land Acquisition Act and cannot also claim want of notice and on that score, impugn the Decree of Sub Court, Tiruvellore. The Land Acquisition Officer, functioning under M.M.D.A. is the agent of MMDA itself and notice to him is notice to MMDA. The Land Acquisition Officer was not acting independently as in a Revenue Department, but only as an employee of MMDA during the entire proceedings of the Land Acquisition. Hence notice to him, who was shown as a party in Section 18 Reference proceedings would be notice to MMDA itself, if the acquisition is to be treated as for MMDA and not for Government, though the compensation was to be paid from public funds as declared in Section 6 declaration. As a question of law, it was contended that the judicial pronouncement of a Court cannot be questioned under a Writ under Article 226 of the Constitution of India. This contention has been raised by all the land owners in their counter-affidavits and

also argued at the time of hearing.

5. The land owner in W.P.No. 6272 of 1994 has also filed an independent counter-affidavit in the above writ petition. According to the land owner, the discretionary jurisdiction vested in this Court under Article 226 of the Constitution of India, cannot be invoked to quash the award of the 2nd respondent which is a decree in term of Scc.2(c) of the Code of Civil Procedure. The Land Acquisition Act provides for the remedy of filing an appeal and in fact, the 1st respondent-Special Tahsildar has already filed appeals against the award of the Sub Court, Tiruvellore before this Court and the same are pending disposal. It is further contended that when the statute provides an alternative remedy, the petitioner is not entitled to invoke Article 226 of the Constitution of India. The petitioner always had a statutory right to appear even before the Special Tahsildar and also before the Sub Court, Thiruvellore and adduce evidence for the purpose of determining the amount of compensation. When such a right is conferred on the petitioner u/s 50(2) of the Act and the petitioner not having availed of the same, cannot now complain that it had no notice of the proceedings before the Sub Court. The petitioner, therefore, cannot take undue advantage that a notice had not been served on it. u/s 20(3) the only right that accrues to the petitioner is a right of appearance during the proceedings u/s 18 of the Act. Section 20(d), therefore, docs not confer any right to raise objections about the quantum of compensation awarded by the Court. The right to raise objections conferred on the petitioner u/s 50(2) of the Act has always been available to the petitioner. The petitioner not having exercised its statutory right to raise objections, cannot now claim that it did not have an opportunity to object to the rate of compensation. The Writ petition is liable to be dismissed on the ground of laches. The State has already filed statutory appeals before this Court against the award of the Subordinate Judge, Thiruvellore and in as much as the petitioner's interests are being protected by the State, the petitioner cannot have any grievance. The writ petitioner can have itself impleaded in the appeals that have been filed by the State or obtain leave from this Court and institute an appeal on its accord.

6. Similar counter-affidavits have been filed by the other land owners raising more or less the same objections.

7. Before proceeding to consider the rival contentions of the parties, it is necessary to clear a doubt raised in the course of the proceedings whether a writ under Article 226 of the Constitution of India, could be issued to set aside the judgment and decree of a Civil Court in a proceeding u/s 18 of the Land Acquisition Act.

8. Elaborate arguments were advanced by the learned counsel appearing on either sides. Principal argument was made by Mr. A.L. Somayaji, learned senior advocate appearing for the MMDA and by Mr. K.T. Paulpandian, learned counsel on behalf of the respondents in some writ petitions.

9. Mr. A.L. Somayaji, learned senior advocate, appearing for the MMDA in the writ petitions contends that the award of a Civil Court in proceedings u/s 18 of the Land Acquisition Act, should be set aside in as much as the court below had violated the statutory requirements of sub-section (d) of Section 20 of the Land Acquisition Act. hereinafter called in short ""Act". According to him. sub-section (d) of Section 20 incorporates the principles of natural justice and any act done in violation of the principles of natural justice, would be a nullity.

10. Mr. K.T. Paulpandian, learned counsel appearing for the respondents in some of the writ petitions, would per contra, raise the following contentions:

(a) The Award of the Court has not reached a finality in as much as the State Government has preferred First Appeals u/s 54 of the Land Acquisition Act, and against the impugned awards the writ petitioners can be impleaded as parties in the said First Appeals and be heard.

(b) It is also his contention that it is not as if in all circumstances the violation of principles of natural justice would render the decision a nullity.

(c) According to him, the non-compliance with the requirements of sub-section(d) of Section 20 would not render the decision void.

(d) The rights of beneficiary is set out under Sub-section 2 of Section 50 of the Act and the only right available to the beneficiary is to adduce evidence for the purpose of determining the amount of compensation. Hence no prejudice would be caused to the Writ Petitioner if the notice is issued to them in the First Appeal pending before this Court and an opportunity of hearing is given to them.

(e) It is further contended that the writ petitioner had full knowledge about the pendency of proceedings u/s 18 of the Act and they did not take any step in order to exercise their rights u/s 50(2) of the Act.

(f) It is the submission of the learned counsel that the writ petitioner has not suffered any prejudice on account of the court below not issuing a notice to them.

(g) According to Mr. K.T. Paulpandian, mere violation of principles of natural justice is not sufficient to set aside the award unless the petitioner was prejudicially affected by the non-issue of notice to them under sub-section (d) of Section 20.

(h) It is also submitted that some defect had crept in, in the award due to the non-hearing of the petitioner and that the same could be cured by the appellate court and therefore, there is no need to set aside the award and remit the matter to the lower court with a direction to hear the matter afresh issuing a notice to the petitioner.

(i) It is the submission of Mr. Paulpandian that the appeal being a continuation of the original proceedings, the appellate court can exercise its powers u/s 20(d) of the Act and such an opportunity to the petitioner would meet the ends of justice.

11. Mr. M.S.Subramaniam, learned counsel appearing for some of the land owners in some of the writ petitions, would submit that the Land Acquisition Officer who was appointed by the Court is an employee of MMDA and notice to the Special Tahsildar amounts to notice to the MMDA, the writ petitioner and nowhere it is stated by MMDA that evidence let in already, is not sufficient and that they have more evidence. He would invite our attention to the decision in I.L.R.1930 Calcutta page 36 and the decision of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, .

12. Mr. A.L. Somayaji, learned senior advocate, would submit in reply that the Appellate Court cannot cure the defect by affording an opportunity to the petitioner to place the relevant materials relating to the determination of compensation and such a step would not amount to unfair trial followed by fair appeal, According to him, the Appellate Court cannot cure the defect by giving opportunity to the petitioner to place evidence in regard to the compensation. In this context, he would invite our attention to the decision of the Supreme Court reported in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, and Veerappa Pillai Vs. Raman and Raman Ltd. and Others,

13. Our attention was also drawn to the decision rendered by one of us (A.R. LAKSHMANAN. J) reported in 1993 Writ Law Reporter page 678 (Neyveli Lignite Corporation Ltd., represented by the Secretary, Neyveli v. P.R.Govindarajulu & 2 others). He would also submit that it is wrong to call the Special Tahsildar as an employee of the MMDA and the Special Tahsildar is a Government Servant who is placed in charge of the acquisition proceedings for the benefit of the writ petitioner. Hence it is incorrect to state that notice to the Special Tahsildar who is in charge of the Acquisition of the land for the benefit of the petitioner, would amount to notice to MMDA.

14. There cannot be any doubt as to the issuance of a Writ to the inferior courts or to the Tribunals to correct the errors of jurisdiction committed by them or to issue a writ in exercise of a supervisory jurisdiction to correct errors of law apparent on the face of the record or where the inferior courts act in violation of principles of natural justice. In Syed Yakoob Vs. K.S. Radhakrishnan and Others, , it has been observed as follows:

"Where it is manifest or clear that the conclusion of law recorded by an inferior Court Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari".

15. No doubt, in Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, relied on by Mr. K.T. Paulpandian, it has been held that a judicial order passed by the High Court in proceedings on its original side, are not amenable to the writ jurisdiction under Article 226 of the Constitution of India. In this context, it is necessary to refer to the decision reported in A.R. Antulay Vs.

R.S. Nayak and Another, wherein the Supreme Court has considered in extenso the decision in Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, , and has held as follows:-

Para 179:-

"Mirajkar was a case in which the validity of an interlocutory order passed by a judge of the Bombay High Court pertaining to the publication of reports of the proceedings in a suit pending before him was challenged by a journalist as violating his fundamental rights under Article 19 of the Constitution. The matter came to the Supreme Court by way of a writ petition under Article 32. The validity of the order was upheld by the majority of the Judges while Hidayatullah J. dissented. In this connection it is necessary to refer to Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, in the judgment of Gajendragadkar, C.J.

"Mr. Setalvad has conceded that if a Court of competent jurisdiction makes an order in a proceeding before it, and the order is inter-parties, its validity cannot be challenged by invoking the jurisdiction of this Court under Article 32, though the said order may affect the aggrieved party's fundamental rights. His whole argument before us has been that the impugned order affects the fundamental rights of a stranger to the proceeding before the Court: and that, he contends, justifies the petitioner in moving this Court under Art 32. It is necessary to examine the validity of this argument.

The question before the Supreme Court was thus as to whether, even at the instance of a stranger to the earlier proceedings, the earlier stranger to the earlier proceedings, the earlier order could be challenged by means of a writ petition under Article 32. One of the questions that had to be considered by the Court was whether the judicial order passed by the learned Judge of the High Court was amenable to be writ jurisdiction of the Court under Article 32. On this question, the Judge reacted differently:

(i) Gajendragadkar, C.J. and Wanchoo, Mudholkar, Sikri and Ramaswamy, JJ. had this to say:

"The High Court is a superior Court of Record and it is for it to consider whether any matter falls within its jurisdiction or not. The order is a judicial order and if it is erroneous, a person aggrieved by it, though a stranger, could move this Court under Article 136 and the order can be corrected in appeal but the question about the existence of the said jurisdiction as well as the validity or the propriety of the order cannot be raised in writ proceedings under Article 32. (ii) Sarkar, J. also concurred in the view that this Court had no power to issue a certiorari to the High Court, he observed:

"I confess the question is of some haziness. That haziness arises because the courts in our country which have been given the power to issue the writ are not fully analogous to the English courts having that power. We have to seek a way

out for ourselves. Having given the matter my best consideration, I venture to think that it was not contemplated that a High Court is an inferior court even though it is a court of limited jurisdiction. The Constitution gave power to the High Court to issue the writ. In England, an inferior court could never issue the writ. I think it would be abhorrent to the principle of certiorari if a Court which can itself issue the writ is to be made subject to be corrected by a writ issued by another Court. When a court has the power to issue the writ, it is not, according to the fundamental principles of certiorari, an inferior court or a court of limited jurisdiction, it does not cease to be so because another Court to which appeals from it lie has also the power to issue the writ. That should furnish strong justification for saying that the Constitution did not contemplate the High Courts to be inferior Courts so that their decisions would be liable to be quashed by writs issued by the Supreme Court which also had been given power to issue the writs. Nor do I think that the cause of justice will in any manner be affected if a High Court is not made amenable to correction by this Court by the issue of the writ. In my opinion, therefore, this Court has no power to issue a certiorari to a High Court". (iii) Bachawat J, held:

"The High Court has jurisdiction to decide if it could restrain the publication of any document or information relating to the trial of a pending suit or concerning which the suit is brought, if it erroneously assumes a jurisdiction not vested in it, its decision may be set aside in appropriate proceedings but the decision is not open to attack under Article 32 on the ground that it infringes the fundamental right under Article 19(1)(a). If a stranger is prejudiced by an order forbidding the publication of the report of any proceeding, his proper course is only to apply to the Court to lift the ban" (iv) Justice Shan thought that, in principle, a writ petition could perhaps be filed to challenge an order of a High Court on the ground that it violated the fundamental rights of the petitioner under Articles 20, 21 and 22 but he left the question open, he, however, concluded that an order of the nature in issue before the Court could not be said to infringe Article 19.

Para 180:-

Hidayatullah, J., as His Lordship then was, however, dissented. He observed:

"Even assuming the impugned order means a temporary suppression of the evidence of the witness the trial Judge had no jurisdiction to pass the order. As he passed no recorded order, the appropriate remedy (in fact the only effective remedy) is to seek to quash the order by a writ under Article 32. There may be action by a Judge which may offend the fundamental rights under Articles 14,15,19,20,21 and 22 and an appeal to this court will not only be not practicable but will also be an ineffective remedy and this Court can issue a writ to the High Court to quash its order under Article 32 of the Constitution. Since there is no exception in Article 32 in respect of the High Courts there is a presumption that the High Courts are not excluded. Even with the enactment of Article 226, the power which is conferred on the High Court is not in every sense a co-ordinate power and the implication of reading Articles 32,136 and 226

together is that there is no sharing of the powers to issue the prerogative writs possessed by this Court. Under the total scheme of the Constitution, the subordination of the High Courts to the Supreme Court is not only evident but is logical".

His Lordship proceeded to meet an objection that such a course might cast a slur on the High Courts or open the floodgates of litigation. He observed:

"Article 32 is concerned with Fundamental Rights and Fundamental Rights only. It is not concerned with breaches of law which do not involve fundamental rights directly. The ordinary writs of certiorari, mandamus and prohibition can only issue by enforcement of Fundamental Rights. A clear-cut case of breach of Fundamental Right alone can be the basis for the exercise of this power. I have already given examples of actions of courts and Judges which are not instances of wrong Judicial orders capable of being brought before this court only by appeal but breaches of Fundamental Rights clear and simple. Denial of equality as for example by excluding members of a particular party or of a particular community from the public court room in a public hearing without any fault, when others are allowed to stay on would be a case of breach of fundamental right of equal protection given by this Constitution. Must an affected person in such a case ask the Judge to write down his order, so that he may appeal against it? Or is he expected to ask for special leave from this Court? If a High Court Judge in England acted improperly, there may be no remedy because of the limitations on the rights of the subject against the Crown. But in such circumstances in England, the hearing is considered vitiated and the decision voidable. This need not arise here. The High Court in our country in similar circumstances is not immune because there is a remedy to move this court for a writ against discriminatory treatment and this Court should not in a suitable case shirk to issue a writ to a High Court Judge, who ignores the fundamental rights and his obligations under the Constitution. Other cases can easily be imagined under Articles 14, 15, 19, 20, 21 and 22 of the Constitution, in which there may be action by a Judge which may offend the fundamental rights and in which an appeal to this Court will not only be not practicable but also quite an ineffective remedy.

We need not be dismayed that the view I take means a slur on the High Courts or that this Court will be flooded with petitions under Article 32 of the Constitution. Although the High Courts possess a power to interfere by way of high prerogative writs of certiorari, mandamus and prohibition, such powers have not been invoked against the normal and routine work of subordinate courts and tribunals. The reason is that people understand the difference between an approach to the High Court by way of appeals etc. and approach for the purpose of asking for writs under Article 226. Nor have the High Courts spread a procrustean bed of high prerogative writs for all actions to lie. Decisions of the courts have been subjected to statutory appeals and revisions but the losing side has not charged the Judge with a breach of fundamental rights because he

ordered attachment of property belonging to a stranger to the litigation or by his order affected rights of the parties or even strangers. This is because the people understand the difference between normal proceedings of a civil nature and proceedings in which there is a breach of fundamental rights. The courts' acts, between parties and even between parties and strangers, done impersonally and objectively are challengeable under the ordinary law only. But acts which involve the court with a fundamental right are quite different". One more passage from the judgment needs to be quoted. Observed the learned Judge:

"I may dispose of a few results which it was suggested, might flow from my view that this court can issue a high prerogative writ to the High Court for enforcement of fundamental rights. It was suggested that the High Courts might issue writs to this court and to other High Courts and one Judge or Bench in the High Court and the Supreme Court might issue a writ to another Judge or Bench in the same Court. This is an erroneous assumption. To begin with the High Courts cannot issue a writ to the Supreme Court because the writ goes down and not up. Similarly, a High Court cannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction.

I must hold that this English practice of not issuing writs in the same court is in the very nature of things. One High Court will thus not be able to issue a writ to another High Court nor even to a Court exercising the powers of the High Court. In so far as this Court is concerned, the argument that one Bench or one Judge might issue a writ to another Bench or Judge, need hardly be considered. My opinion given no support to such a view and I hope I have said nothing to give counterface to it. These are imaginary fears which have no reality either in law or in fact"

Para 181:-

I have set out at length portions from the judgment of Hidayatullah, J. as Shri Rao placed considerable reliance on it. From the above extracts, it will be seen that the majority of the Court was clearly of opinion that an order of a High Court cannot be challenged by way of a writ petition under Article 32 of the Constitution on the ground that it violates the fundamental rights, not even at the instance of a person who was not at all a party to the proceedings in which the earlier order was passed. Even Hidayatullah, J. has clearly expressed the view that, though a writ of certiorari might issue to quash the order of a High Court in appropriate case, it cannot lie from a Bench of one court to another Bench of the same High Court. Subba Rao, C.J. has also made an observation to like effect in regard to High Court Benches intense in *Ghulam Sarwar Vs. Union of India (UOI) and Others*, . The decision in *Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad*, seems to indicate to the contrary. But it is clearly distinguishable and has been distinguished by the nine Judge Bench in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, . The observations of Gajendragadkar, C.J.(at P.766), and Sarkar, J (at p.780), be seen

in this context. In that case, it is true that the order passed by the Court directing the appellant to deposit security was also quashed but that was a purely consequential order which followed on the well-founded challenge to the validity of the rule. Hidayatullah, J. also argued that this was so and explained that the judicial decision which was based on the rule was only revised(p.790)".

16. Thus, it is clear that the Supreme Court has laid down in categorical terms that a High Court cannot issue a notice to the Supreme Court because the writ goes down and not up. Similarly, a High Court cannot issue a notice to another High Court. The Writ does not go to a Court placed on an equal footing in the matter of jurisdiction. Thus it is clear that even the majority opinion in Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, , is only that an order of a High Court cannot be challenged by way of writ petition under Article 32 of the Act on the ground that it violates the fundamental rights not even at the instance of the person who was not at all a party to the proceedings in which the earliest order was passed. But, it can be taken as well settled that the High Court is possessed of the power to issue a prerogative writs to subordinate courts and Tribunals but normally such power is not exercised against the normal and routine work of subordinate Court and Tribunals. In this connection, useful reference could be made to the decision of the Supreme Court in AIR 1977 SC 1718 (State of Madhya Pradesh v. Babu Lal and Ors.). That was a case where the State of Madhya Pradesh filed a writ petition for a declaration that the suit filed by the respondent in that case was in violation of a statutory provision of the Madhya Pradesh Land Revenue Code, 1959, but in the Civil Court, a compromise was reached based on which the suit was decreed. The contention advanced before the High Court was that a Writ of Certiorari should be issued to quash the judgment which was illegal and in clear violation of law. The writ petition was rejected in the view that the State could file a suit for declaration for setting aside the judgment of Madhya Pradesh. The Apex Court has observed as follows:

"One of the principles on which Certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by Certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing Writ of Certiorari.

The Judgment of the High Court is set aside. A Writ of Certiorari is issued to quash the judgment and decree dated 8 August, 1973 passed by the respondent Civil Judge. Class II. Tehsil Jhabua, District Jhabua in Civil Suit No,70-J of 1973"

For the purpose of convenience Section 20 of the Act is extracted below:-

"Section 20 Service of notice:- The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:-

- (a) the applicant;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded;
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector, and
- (d) if the acquisition is not made for the Government, the person or authority for whom it is made. (Amended as per TN Act 14 of 1990 dt.5.5.90).

It is clear from sub-section (d) of Section 20 that a statutory duty is cast on the court dealing with a reference u/s 18. to serve notice inter alia on the person or authorities for whom acquisition is made, provided the acquisition is not made for the Government.

17. In *Neelagangabai and another Vs. State of Karnataka and others*, the Supreme Court had occasion to consider the effect of non issue of notice to the beneficiaries of the acquisition. That was a case where a writ petition was filed in Karnataka High Court by the Hubli Dharwar Municipal Corporation for setting aside an award under the Land Acquisition Act. In respect of compensation payable to the land owners and directing to reopen the proceedings before the Civil Court on a reference u/s 18 of the Act, the High Court of Karnataka set aside the award on the ground that no notice was issued to the Municipal Corporation and directed the Civil Court to reopen the proceedings for enhancement of compensation and for fresh disposal in accordance with law. On appeal before the Supreme Court at the instance of the land owners, the Supreme Court applying the decision of the High Court, held that the judgment rendered in the Reference u/s 18 was illegal and not binding on the Municipal Corporation because of which the Corporation was deprived of an opportunity to place its case before the Court while confirming the direction of the High Court, the Supreme Court has held as follows:

"Para-3:-

Admittedly the land was acquired for the purpose of the respondent-Corporation and the burden of payment of the compensation is on the Corporation, In this background the High Court has held that it was mandatory for the court of reference to have caused a notice served on the respondent-Corporation before proceeding to determine the compensation claim. Since no notice was given to the respondent-Corporation and it was thus deprived of an opportunity to place its case before the Court, the judgment rendered in the reference case was illegal and not binding on the Corporation. We are in agreement with this view. Section 20 of the Land Acquisition Act as applicable to the State of Karnataka reads as follows :-

"20. Service of notice-The court shall thereupon cause a notice, specifying the day on which the court will proceed to determine the reference, and directing their appearance before the Court on that day, to be served on the following

persons, namely:-

(a) the Deputy Commissioner;

(b) all persons interested in the reference; and

(c) if the acquisition is not made for Government, the person or authority for whom it is made".

In view of the clear language used in clause(c) of Section 20, mentioned above, there cannot be any doubt that the respondent- Corporation was entitled to be heard before the reference could be determined. The High Court has also relied upon the decision in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s.*, wherein the expression "person interested" was interpreted liberally so as to include an authority like the Corporation in the present case, but in view of the further provision specifying mentioning in clause(c) the authority for whom the acquisition is made it is not necessary to interpret clause(b) of Section 20 in the present appeal. We accordingly confirm the direction of the High Court as contained in the impugned judgment that the Principal Civil Judge, Hubli. should re-open the proceedings in the L.A. Case No. 64 of 1979 and decide the matter afresh after giving the Corporation a chance to lead its evidence on the question of valuation. Since the matter is an old one, the respondent-Corporation is hereby directed to appear in the said case within 3 weeks from today without waiting for any further notice. The appeal is dismissed with costs".

18. One of us (AR. Lakshmanan, J) sitting singly had occasion to consider this question in the decision reported in 1993 Writ Law Reporter page 678 (*Neyveli Lignite Corporation Ltd rep. by the Secretary, Neyveli-1 v. P. R. Govindarajulu and 2 others*). That was a case where the first appeal was pending u/s 54 of the Act at the instance of the State. Notwithstanding the fact that such appeal was pending and notwithstanding of the question that the non-issuance of notice to the beneficiary was also raised in the first appeal, the judgment of the court below was set aside and the matter was remitted for fresh disposal. The Court observed as under:-

"Section 20(d) of the Land Acquisition Act provides that the Court shall cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the persons viz. the applicant and all persons interested in the objection and if the acquisition is not made for the Government, the person or authority for whom it is made.

Admittedly, in this case, the 3rd respondent viz., the Subordinate Judge, (Land Acquisition Court) has not ordered any notice to the person interested viz., the writ petitioner herein, for whose benefit the acquisition is now made. Non-compliance of the statutory provision provided u/s 20(d) of the Land Acquisition Act is fatal to the case. Hence, the awards passed by the 3rd respondent without

affording an opportunity to the interested person cannot be allowed to stand".

19. In AIR 1971 SC 370 (Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras and Anr.), the Supreme Court in para 9 has observed as under: -

"Where the action is taken under an ultra vires statute, or where, although the statute is intra vires, the action is without jurisdiction or the principles of natural justice are violated, a right to move Supreme Court under Article 32 for enforcement of fundamental right exists. Errors of law or fact committed in the exercise of jurisdiction founded on a valid law do not entitle a person to have them corrected by way of petitions under Article 32. The proper way to correct them is to proceed under the provisions for appeal etc., or by way of proceedings under Article 226 before the High Court. A.I.R.1962 SC 1621 relied on."

20. In Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others, , the Supreme Court in para.5 has observed as follows:-

"The question whether explanation (iv) to Section 21(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act is attracted to a case would depend upon the applicability to the facts, of the correct interpretation of the explanation and it would, be a mixed question of law and fact. If the High Court in a writ petition finds that in reaching its conclusion the District Court proceeded on a wrong interpretation of the Explanation, the High Court can correct the error and set aside the conclusion reached by the District Court.

C.M.W.No. 7441 of 1975 D/-14.5.1976 (ALL), Reserved.

21. In Sawarn Singh and Another Vs. State of Punjab and Others, , the Supreme Court has observed as follows :-

"It is well settled that Certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of Certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be"

"In regard to a finding of fact recorded by an inferior tribunal, a Writ of Certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice".

The Supreme Court has also followed the earlier decision reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

22. In Jagdish Prasad Vs. Smt. Angoori Devi, the Supreme Court has observed as follows:-

"The jurisdiction to issue a writ a certiorari is a supervisory one and in exercising it, the Court is not entitled to act as a court of appeal. That necessarily means that the findings of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari, but not an error of fact, however, grave it may appear to be"

23. In Harbans Lal Vs. Jagmohan Saran, the Supreme Court has observed as follows:

"The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate Court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law".

24. The above cited decisions would certainly support the contention of Mr. A.L. Somayaji, learned senior advocate that remedy under Article 226 of the Constitution of India, would be available to the Local Authority on grounds of which judicial review is permissible under Article 226 of the Constitution of India and that the Local Authority is a proper party in those proceedings before the Reference Court and is entitled to be impleaded as a party in those proceedings wherein it can defend determination of the amount of compensation by the Collector and oppose the enhancement of the said amount and also adduce evidence in this regard, and that a Writ of Certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals.

25. The matter was listed for further arguments at the instance of Mr. K.T. Paul Pandian on 20.12.1994. Opportunities were given to both parties to adduce further arguments. According to Mr. K.T. Paul Pandian, non-compliance of principles of natural justice in so far as it relates to quasi judicial forum, cannot be invoked and applied to consequences of non-observance of a statutory Rule before a Judicial forum. According to him, in so far as a Writ Petition is concerned, under Article 226 of the Constitution of India, the rule of exhaustion of statutory remedy is necessary subject to exceptions. However, Mr. K.T. Paul Pandian, after seeing the judgment cited by Mr. A.L. Somayaji, however conceded that the writ petition to quash the orders of Courts and Tribunals, is maintainable. But, according to Mr. Paul Pandian, the Court will not exercise its discretion in the facts and circumstances of the case and the principles laid down for non- judicial forum cannot be applied to a judicial forum and the Court is concerned with the statutory principles of notice and not with the general principles of natural justice. According to Mr. Paul Pandian, the Court has to see

as to whether the Act provides an effective remedy to MMDA and that the non-issuance of a notice to a requisitioning body, though a defect, the said defect is curable. He cited the decision of the Supreme Court in 1993 (1) LW 485 (Union of India v. Sher Singh and Ors.). At the time of hearing, it was also brought to our notice the recent Supreme Court decision in Civil Appeal Nos. 246 to 893 of 1990 (M/s Neyveli Lignite Corporation Limited- Appellant, v. Special Tahsildar (Land Acquisition), Neyveli and Ors.-Respondents). Those appeals arose from the judgment of our High Court in a batch of cases filed by the Neyveli Lignite Corporation Limited (AJ.R.1990 Madras page 160). In that case, a large extent of land for the purpose of excavating inferior quality of the coal, was sought to be acquired. More than 2000 References were made u/s 18 of the Act to the Civil Court. In the pending references, the Corporation sought to implead themselves as party-respondent to adduce evidence for fixation of the proper compensation. The Civil Court dismissed the said applications holding that the Corporation is not an interested person. This Court upheld the order of the Civil Court. In the appeals filed by the State u/s 54, the Corporation sought to implead themselves as a party-respondent which were turned down holding that the Corporation is not a person interested. Against that order, a batch of appeals were filed before the Supreme Court. The Corporation also filed writ petitions challenging the validity of the award and decree made u/s 26 by filing writ petitions. The Full Bench of the Madras High Court Neyveli Lignite Corporation Ltd. Vs. Rangaswamy and Others, held that the NEYVELI Lignite Corporation is not a person interested and dismissed the writ petitions. Appeals have been filed before the Supreme Court by obtaining special leave. When the matter came up before a Bench of two Judges before the Supreme Court, a reference to three Judges was made. The three Judges' Bench by their order dated 19th October, 1994 observed that the word "person interested" is to be liberally interpreted to include the company or the local authority for whose benefit the land was acquired since the company or the local authority is the person ultimately to bear the burden of the compensation. The Supreme Court, after referring to various judgments of the said Court, at page 16, observed as follows:-

"The consistent thread that runs through all the decisions of this Court starting from Himalayan Tiles case is that the beneficiary i.e. local authority or company, a coop, society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the Court and file the appeal against the enhanced award and decree of the Civil Court u/s 26 or of the Judgment and decree u/s 54 or is entitled to file a writ petition under Article 226 and assail its legality or correctness. When the award made u/s 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the acted law that the

conduct of the Collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1 Rule 10 CPC, in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1 Rule 10 CPC. The denial of the right to a person interested is in negation of fair and just procedure of ending Article 14 of the Constitution."

The Supreme Court again at page 19 of its judgment, has observed as follows:-

"But suffice it is to state that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of enquiry by the Collector and reference court u/s 18 or in an appeal u/s 54, it/they would be interested to defend the award under Sections 11 or 26 or would file an appeal independently u/s 54 etc., against the enhanced compensation. As a necessary or proper party affected by the determination of higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the Reference Court u/s 18 or in appeal u/s 54 etc. Considered from this perspective we are of the considered view that the appellant-company is an interested person with in the meaning of Section 3(b) of the Act and is also a proper party, if not a necessary party under Order 1 Rule 10 of the CPC. The High Court had committed manifest error of law in holding that the appellant is not a person interested. The orders of the High Court are accordingly set aside.

Since the writ petitions filed by the appellant were dismissed, we set aside the orders and direct the High Court to treat them as appeals properly filed u/s 54 of the Act and be dealt with along with the appeals filed by the State pending disposal in the High Court. In the pending references u/s 18, in the Court of the Subordinate Judge, Cuddalore, it is directed to order impleading the appellant as a party-respondent and would give reasonable opportunity to cross examine the witness examined by the claimants and to examine witnesses on its behalf to rebut the evidence for higher compensation, the appellant is entitled to be heard in support of the determination of just and proper compensation. In this view, the need to implead the appellant as a party-respondent in the pending appeals in the High Court does not arise".

26. It is thus seen from the above judgment that the Supreme Court has directed to treat the writ petitions filed by the NEYVELI Lignite Corporation Ltd., which were dismissed by the High Court in the earlier stage, as appeals, properly filed u/s 54 of the Act and be dealt with along with the appeals filed by the State already pending final disposal in that High Court. The Supreme Court has also issued directions to the lower court to order impleading the NEYVELI Lignite Corporation as a party-respondent in pending references u/s 18 before it. Strong reliance was placed by Mr. K.T. Paul Pandian on the direction given by the Supreme Court referred to above. He, requested us to read all the writ petitions

filed by the MMDA as appeals or straight-away implead them as a party-respondent in the appeals already filed by the State and pending on the file of this Court According to him the award of the Court has not reached the finality in as much as the State Government has preferred First Appeals u/s 54 of the Act as against the impugned awards and the MMDA can be impleaded as party in the said First Appeals and be heard.

27. On the same day, at the time of hearing, Mr. A.L. Somayaji placed before us another judgment of the Supreme Court (five Honourable Judges) reported in Judgments Today 1994 (7)S.C.304, (U.P. Awas Evam Vikas Parishad v. Gyan Devi (dead)by LPs. & Ors.). Since the full text of the judgment was not available at the time, the matter was adjourned after Christmas Vacation. Accordingly, the matter was listed again after reopening of the Court. Again arguments were advanced by the learned counsel on either side, on the judgment reported in U.P. Awas Evam Vikas Parishad and Others Vs. Rajendra Bahadur Srivastava and Another, .

28. The above was a case where appeals arose out of proceedings for acquisition of the land for U.P. Awas Evam Vikas Parishad, in short called as Board. It has been constituted u/s 3 of the U.P. Awas Evam Vikas Parishad Adhiniyam, 1965. The Board framed a Scheme known as "Trans-Yamuna Housing & Accommodation Scheme" and notice u/s 28 of the U.P. Act in respect of the said scheme (analogous to a notification u/s 4(1) of the Land Acquisition Act) was published on January 31, 1970 and the notification u/s 32 of the U.P. Act. analogous to declaration u/s 6 of the Land Acquisition Act, was published on August 21, 1974. The Special Land Acquisition Officer made an award in April 15, 1978, wherein the amount of compensation was fixed by adopting "belting system". Possession of the land was taken in April, 1978. At the instance of the land owners reference was made to the Tribunal constituted u/s 64 of the U.P. Act. The Tribunal by a common award fixed the market value of the acquired land of the appellants in the appeals at a flat rate. First Appeals were filed by the appellants in appeals arising out of S.L.P.Nos.391 to 393 of 1992 against the award of the Tribunal, The appeals were allowed by a Division Bench of the High Court whereby the belting system was restored and compensation amount has been enhanced. Solatium and interest has been awarded. The High Court, however, not awarded the amount payable under sub-section (1-A) of Section 23 of the Land Acquisition Act. The appeals arising out of S.L.P. 391 to 393 of 1992 have been filed by the land owners against the said judgment of the High Court in the Supreme Court. The appellant in appeal arising out of SLP. Nos. 584, 585 and 642 of 1985 in the High Court against the award of the tribunal which were, however, dismissed by another Division Bench of the High Court by judgment dated December 21, 1990 and the award of the tribunal awarding compensation at Rs. 16.50 per sq. yd. was maintained. The High Court also negatived the claim of the land owners for the amount payable u/s 23(1-A) of the Land Acquisition Act. Being aggrieved by the said judgment of the High Court, appeals arising out of S.L.P.Nos.15810 to 15812 of 1991 have been filed by the land owners.

29. The Board was not impleaded as a party in the reference before the tribunal or in the appeals before the High Court. The Board filed review petition in the High Court for the review of the Judgment dated April, 18, 1991 in First Appeals Nos. 586, 587 etc., and the delay in filing of the said review petitions was explained on the ground that the Board became aware of the decision of the High Court only in August, 1991, when the Legal Advisor of the Board read the said judgment of the High Court in the law reports. The said review petitions were dismissed by the High Court on the ground of delay and for want of paying proper court fees. Appeals were filed by the Board against the order of the High Court, in the Supreme Court. The Board also filed applications for being impleaded as a party in the appeals filed by the land owners in the Supreme Court. While examining the question whether the Land Acquisition Act confers any right on the Board to participate at the stage of determination of compensation for the land which is sought to be acquired u/s 55 of the U.P. Act read with the provisions of the Land Acquisition Act and to assail such determination if the Board feels aggrieved by the same, the Supreme Court, by majority view, observed as follows:-

"ORDER OF THE COURT (PER MAJORITY):

Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

The said right carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings where in it can defend the determination of the amount of compensation by the Collector

and oppose enhancement of the said amount and also adduce evidence in that regard.

In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

In an appeal by the person having an interest in the land seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as this Court.

Since a company for whom land is being acquired has the same right as a local authority u/s 50(2), whatever has been said with regard to a local authority would apply to a company too.

The matter which stand finally concluded, will, however, not be reopened.

We, therefore, allow the applications submitted by the Board for being impleaded as a respondent in the appeals filed by land owners in this court and direct that the Board be also impleaded as a respondent in the appeals filed by the land owners in the High Court. The judgment of the Allahabad High Court dated December 21, 1990 in First Appeal Nos. 584, 585 and 642 of 1985 and the judgment of the said High Court dated April, 18, 1991 in First Appeals Nos. 586, 587 and 641 of 1985 as well as the order dated January 20, 1993 on the review applications filed against the judgment dated April 18, 1991 are set aside and the said appeals are remitted to the High Court for decision in accordance with law. The appeals are disposed of accordingly. There will be no order as to costs".

The Supreme Court has also followed many of its earlier decisions and particularly Neelagangabai and another Vs. State of Karnataka and others, and very many other decisions.

30. The above Supreme Court judgment has provided remedy for all contingencies. Mr. K.T. Paulpandian, taking shelter under paras. 56 and 57 would vehemently urge that the award passed by the Sub Court u/s 18 Reference, need not be quashed and that the Local Authority in this case MMDA should be impleaded as a party straight away by the High Court. On the other hand, Mr. A.L. Somayaji, learned senior advocate appearing for MMDA, would strenuously urge that the very said judgment recognises the right of MMDA to invoke the remedy under Article 226 of the Constitution of India, as well as the remedies available under the Land Acquisition Act, since it does not deprive the Local Authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the Reference Court to invoke the remedy under Article 226 of the Constitution of India. He said that the Sub-Court has failed to serve notice of the acquisition proceedings on the local authority and therefore, the MMDA is entitled to go before the Tribunal u/s 18 of the Act and

oppose the enhancement of the compensation and also adduce evidence in that regard, since the Supreme Court has held in this case itself that the local authority is a proper party to the proceedings in the Reference Court and is entitled to be impleaded as a party in those proceedings. Mr. A.L. Somayaji, learned senior advocate further contended that it an opportunity is not given to the MMDA to go before the Sub-Court, they would be deprived of the valuable statutory rights to appeal u/s 54 of the Act, in the event of opportunity being given to the writ petitioner in the pending First Appeal to place evidence relating to the determination of the compensation. It is no doubt true and needless for us to emphasis that the right of appeal is a very valuable right and that the decision of the Court u/s 18 would be a nullity if there is a breach of the principles of natural justice that where the Court failed to issue a notice as mandated by sub-section (d) of Section 20, and that non- compliance with the requhements of Section 20(d) goes to the root of the matter. The decision reported in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, was strongly relied on by Mr. A.L. Somayaji and also be referred to in this context. While dealing with administrative action, the Supreme Court has considered this question in this decision. The Supreme Court has quoted with approval the following passage occurring in Sir. William Wade's Administration Law:

"If the natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing; instead of a fair trial followed by appeal the procedure is reduced to unfair trial followed by fair appeal".

Therefore, Mr. A.L. Somayaji would contend that this Court has no other option except to set aside the judgment and decree of the court below and remit the matter for fresh disposal in accordance with law, on the ground of failure on the part of the court below in not issuing a statutory notice to the writ petitioner as per the statutory requirements of Section 20(d), since admittedly no notice has been issued to the writ petitioner as required by the amended provisions. Section 20(d), in our opinion, embodies the basic principles of natural justice because the liability to pay the enhanced compensation to the land owners rests on the beneficiary of the acquisition. Failure on the part of the Court to issue notice in proceedings u/s 18 of the Act, cannot be cured. The writ petitioners also cannot be expected to keep vigil and watch and find out whether any proceedings have been initiated by the land owners whose lands have been acquired for the enhancement of compensation. The Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, in unmistakable terms has noted that non- observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. Of course, this position is made clear in paragraph 24 of the aforesaid decision at page 147 which reads as follows:-

"In our view, the principles of natural justice know of no exclusionary" rule dependent on whether it would have made any difference if natural justice had

been observed, the non- observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary".

While answering the contention of the land owners that MMDA was aware of the pendency of the proceedings u/s 18 of the Land Acquisition Act. Mr. A.L. Somayaji submitted that that would not be sufficient in law to disentitle them to notice in view of the mandatory requirements cast on the court u/s 20(d). It is obligatory on the part of the Court to issue notice to the petitioner and also furnish copy of the claim made by the petitioner, and the petitioner should be required to meet the claim of the land owners for enhancement of the compensation. Only men, the requirements of Section 20(d) can be said to be fully met.

31. We would have fully endorsed the legal submissions on the intrinsic questions of law made by Mr. A.L. Somayaji as referred to in paragraphs above, but for the judgments of the Supreme Court in U.P. Awas Evam Vikas Parishad and Others Vs. Rajendra Bahadur Srivastava and Another, , and the order of the Supreme Court in Civil Appeal Nos. 246 to 893 of 1990 dated 19th October, 1994 (M/s. Neyveli Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition) NEYVELI and Ors.) and the judgment of the Supreme Court in 1993(1) LW 485 (Union of India v. Sher Singh and Ors.). It is seen from the case in Judgments Today 1994(7) S.C.304 that the U.P. Awas Evam Vikas Parishad filed a Review petition in the High Court for the review of the judgment in the First Appeals Nos. 586 , 587 and 641 of 1985 and the delay in filing the said review petitions. The said Review petitions were dismissed by the High Court on the ground of delay. S.L.Ps. were filed by the Board against the said order. The Board has filed applications for being impleaded as a party in the appeals filed by the land owners in the Supreme Court. The Supreme Court considering the various judgments of the said Court, have observed that the presence of the local authority is necessary for the decision of the question involved in the proceedings before the Reference Court and it is a proper party to the proceedings and therefore, it is entitled to be impleaded as a party in the proceedings before the Reference Court, and in case no appeal is filed by the Government, the local authority if affected by any enhancement may also file an appeal with the leave of the Court, and even if the local authority is not impleaded as a party before the Reference Court, the local authority can file an appeal against the award in the High Court after obtaining leave of the Court, if it is prejudicially affected by the award. In case the Government files an appeal against the enhancement of the award, the local authority is entitled to support the said appeal and get itself impleaded as a party. When the person having an interest in the land files an appeal in the High Court against the award of the reference court and seeks enhancement of the amount of compensation and local authority should be impleaded as a party in the said appeal. The Supreme Court has also observed that u/s 50(2) of the Land Acquisition Act, the company for whom the land is being acquired, is also entitled to appear and adduce, evidence

for the purpose of determining the compensation. In the case before the Supreme Court, it is not disputed that no notice under sub-section(2) of Section 50 of the Act was served on the Board either by the Special Land Acquisition Officer or by the Tribunal. The Board felt aggrieved by the decision of the High Court in the First Appeals whereby the amount of compensation as determined by the Tribunal, was enhanced. In these circumstances, the Supreme Court gave a direction that it would be just and proper that the Board is heard by the High Court in the appeals filed by the land owners who are seeking enhancement of the amount of compensation awarded by the Tribunal before any such enhancement is made in the said appeal. The Supreme Court, therefore, allowed the appeals submitted by the Board for being impleaded as respondent in the appeals filed by the land owners in the Supreme Court and further directed the Board to be impleaded as respondent in the appeals filed by the land owners in the High Court and the judgments of the High Court were set aside and the appeals were remitted to the High Court for decision in accordance with the law. Likewise, the Supreme Court in Civil Appeal Nos. 246 to 893 of 1990 filed by NEYVELI Lignite Corporation Ltd., has also directed that the beneficiaries for whose benefit the land is acquired is served with notice and brought on record at the stage of enquiry by the Collector and reference court u/s 18 or in an appeal u/s 54. The Supreme Court in this case, set aside the orders of the Full Bench of the Madras High Court in Neyveli Lignite Corporation Ltd. Vs. Rangaswamy and Others, and directed this Court to treat the writ petitions as appeals properly filed u/s 54 of the Act and be dealt with along with the appeals filed by the State pending disposal of the High Court. In another recent judgment of the Supreme Court reported in 1993 (1) Law Weekly page 485 (Union of India v. Sher Singh and Ors.), a Division Bench of the Supreme Court in an identical matter, while rejecting the request of the parties before it for referring the case to a larger Bench, has however allowed the appeal by the Union of India and set aside the order of the High Court dated 24.5.1989. However, it was brought to the notice of the Supreme Court that the lower court enhanced the compensation by an order dated 17.1.1990 after the dismissal of the revision by the Union of India on 24.5.1989, since the Union of India has been deprived of filing an appeal against the order of the lower court enhancing the compensation as its application for impleadment was itself dismissed by the lower Court, the Supreme Court directed that the application of the Union of India for impleadment be allowed as a result of which it was entitled to file an appeal in the High Court against the judgment of the Additional District Judge dated 17-1-1990 within a period of 90 days which shall be counted from the date of the order of the Supreme Court.

32. In the instant case, the State has admittedly filed number of appeals and many of the appeals have been numbered and interim stay was granted. Few appeals are in the S.R. stage. Since the appeals are pending, we, by applying the ratio laid down by the Supreme Court, straight-away implead the Madras Metropolitan Development Authority as a party respondent in all the appeals now pending and in the appeals to be numbered as and when they are numbered. We

feel, to avoid unnecessary delay and monetary involvement for the MMDA and of the land owners and the State, it would be the just and proper course to be adopted. Since admittedly no notice was served on the petitioner-MMDA, it would be just and proper that the MMDA is heard by this Court, in the appeals filed by the State challenging the enhancement, or in the appeals filed by the land owners who are seeking further enhancement of compensation awarded by the Tribunal, before any such enhancement is made in the said appeals. We, therefore, dismiss all the writ petitions and instead of quashing the award as requested, we make them as party-respondent in all the abovesaid appeals filed against the award of compensation by the Sub Court. The interim stay granted By this Court in all the Writ Miscellaneous Petitions during the pendency of the Writ petitions, shall continue to be in force. The Madras Metropolitan Development Authority is entitled to challenge the enhancement of compensation now made by the Sub Court in a manner known to law. It will be entitled to all opportunities to question the enhancement in accordance with law.

33. Some of the abovesaid appeals are already before us posted along with these writ petitions. The Office is directed to post all those appeals along with the other connected appeals not numbered yet, after numbering the same and after amending the cause title by incorporating the MMDA as party respondent in all such appeals.

34. All the Writ Petitions are accordingly dismissed subject to the directions indicated above. There will be no order as to costs.