

(2008) 11 MAD CK 0107

In the Madras High Court

Case No : W.P (MD) No. 4377 of 2008 and M.P (MD) No's. 1 to 3 of 2008

Shanmugha Arts, Science, Technology and Research
Academy (known as Sastra University)

APPELLANT

Vs

Union of India (UOI) and National Highways Authority of
India, Project Implementation Unit

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A
National Highways Act, 1956 — Section 3A, 3C
University Grants Commission Act, 1956 — Section 3

Citation : (2008) 11 MAD CK 0107

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : G. Rajagopal for G.R. Associates, for the Appellant; K. Ramakrishnan, for R. 1, V. Chellammal, Special Govt. Pleader for R. 2, A. Rajendran, for R. 3 and G.R. Swaminathan, for Respondent in M.P (MD) No. 2 of 2008, for the Respondent

Final Decision : Allowed

Judgement

G. Rajasuria, J.—Animadverting upon the order passed by the second Respondent dated 30.04.2008 in R.C.60/2007/Unit III/Thanjavur - Tiruchirappalli, this writ petition is focused so as to get quashed the same, by issuing a Writ of Certiorari.

2. The facts giving rise to the filing of this writ petition as stood exposed from the affidavit accompanying the writ petition as well as from the submissions made by the learned Senior Counsel for the Petitioner, could succinctly and precisely, tersely and briefly, be set out thus:

The third Respondent intended to acquire the land for widening the existing road connecting Trichy and Thanjavur and in that process, steps have been taken. Wherefore the Central Government passed notification dated 17.12.2007 vide

3A(1) Notification published in GOI Gazette Special Publication No. 1550 Section 0. No. 2136 (E). Whereupon, the substance of the notification was published in two local newspapers namely "Dhina Thanthi" and "The Hindu" dated 31.01.2008. Even before such paper publications, but after the Gazette notification, the communication dated 10.01.2008 was sent by the third Respondent to the Petitioner who submitted his objection on 21.01.2008. After the publication in the newspapers cited supra, one other objection dated 19.02.2008 was submitted by the Petitioner reiterating what was already put forth before the third Respondent. Whereupon, the second Respondent, the competent authority issued notice scheduling the date of enquiry as 13.03.2008 and on that date, the Petitioner appeared along with his advocate. On the date of hearing, a written submission in the form of supplication was also given by the Petitioner to the second Respondent. Ultimately, the second Respondent served the copy of the impugned order dated 30.04.2008 on the Petitioner, thereupon only, the Petitioner came to know that the objection filed by the Petitioner was communicated to the third Respondent and obtained their remarks and after referring to the objections of the Petitioner as well as the remarks thereon furnished by the third Respondent, the second Respondent passed the impugned orders. However, the impugned order dated 30.04.2008 passed by the second Respondent is niggard and bereft of reasons for having rejected the Petitioner's objections and for agreeing with the remarks furnished by the third Respondent. No copy of the remarks furnished by the third Respondent as against the objections filed by the Petitioner, was served on the Petitioner so as to effectively put forth the case of the Petitioner. As such, the principles of natural justice have been violated in this regard. The second Respondent mechanically by simply narrating the objections filed by the Petitioner and the remarks furnished by the third Respondent, agreed with the third Respondent without setting out reasons and hence, the impugned order passed by the second Respondent is liable to be set aside as it falls foul of the principles of natural justice.

3. The plan prepared by the third Respondent, a copy of which was furnished to the Petitioner, contains an artificial bend at the campus of the Petitioner and thereby, deprives the Petitioner to run his institution. If the road is laid as per the said plan, naturally the Petitioner's running of the deemed University would be set at naught or it will be in doldrums; ultimately, they would be put to irreparable loss. In the objections also, the Petitioner had set out as to how, if the proposed road was laid, it would cause noise pollution and create various other difficulties in addition to resulting in demolition of hospital building and other buildings of the University.

4. Per contra, the refutatory counter has been filed by the third Respondent denying and remonstrating, gainsaying and contradicting the averments/allegations in the petition; the sum and substance, the pith and marrow, the warp and woof of the same, could inter alia be set out thus:

The Petitioner is having no right to invoke Article 226 of the Constitution of India

as per the decisions of the Honourable Apex Court. The scope of the enquiry u/s 3C of the National Highways Act is very limited and no Court could go into the validity of any plan. On technical aspects, the Court cannot interfere. Various buildings of other persons have been demolished for the purpose of laying the road and only the Petitioner is objecting. The views obtained by the third Respondent from the experts, are found referred to in the impugned order which would speak by itself that the plan is strictly in accordance with Indian Road Congress. If as suggested by the Petitioner, the alignment of the road is changed, it would be necessitate other lands belonging to different persons may have to be acquired and various buildings have to be demolished.

5. Per contra, if the existing plan is implemented in stricto sensu, cost wise it would be lesser and furthermore, it would enable free flow of traffic vehicular at 100 Km/hr which is the object of laying the said road. At the most, if the said plan is implemented, the Petitioner will be losing only the building where a small hospital is being run and their compound wall and not as aired by the Petitioner in the affidavit accompanying the writ petition. The entire running of the deemed University would not be hampered. It would not cause noise pollution also. Accordingly, he prayed for the dismissal of the writ petition.

6. Heard both sides.

7. The points for consideration are:

(i) Whether the Petitioner has justifiably invoked Article 226 of the Constitution of India in the facts and circumstances of this case?

(ii) Whether the allegations/averments as found set out in the objections filed before the second Respondent are within the purview of enquiry u/s 3 C of the The National Highways Act, 1956? And

(iii) Whether the principles of natural justice have been adhered to in this case before passing the impugned order by the second Respondent?

8. All the above three points are interlinked and entwined, interwoven and interconnected with one another and accordingly, all these points are taken together for discussion.

Point Nos. (i) to (iii):

9. The learned Senior Counsel for the Petitioner, placing reliance on a plethora of precedents, would develop his arguments to the effect that when the principles of natural justice are violated by the quasi-judicial authority, the Court could always interfere and it would be preposterous on the part of the Respondents to contend that the Court cannot interfere whenever the provisions of the National Highways Act, 1956, is being implemented.

10. Whereas the learned Counsel for the third Respondent would cite various other decisions in support his contention that on technical matters, such as alignment of road, noise pollution etc., the Court cannot interfere and it has no

jurisdiction. Citing the decision of the Honourable Apex Court in Competent Authority Vs. Barangore Jute Factory and Others, , he would develop his argument that virtually the pleas as the ones raised by the Petitioner are beyond the scope of enquiry and consideration u/s 3-C of the National Highways Act.

11. The learned Counsel for the Petitioner also would put forth a factually based argument to the effect that the third Respondent is intending to widen the existing road which is already having such curve in that locality and it is not a new curve which could be labelled as a new artificial and motivated curve. If the suggestion of the Petitioner is accepted, various other buildings of the private persons would have to be demolished which would not be just and proper.

12. It is just and necessary to consider the decisions cited on either side in seriatim.

13. The learned Counsel for the third Respondent cited the decision of the Honourable Apex Court in Competent Authority Vs. Barangore Jute Factory and Others, . An excerpt from it, would run thus:

8. The absence of a plan also renders the right to file objections u/s 3C(I), nugatory. In the absence of a plan, it is impossible to ascertain or know which part of the acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ Petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land u/s 4 of the said Act, Section 3-C(I) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those u/s 3A(I). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned Counsel for NHA that failure to file objections disentitles the writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned Counsel relied on the judgment of this Court in Delhi Admn v. Gurdip Singh Urban. In our view, this judgment has no application in the facts of the present case where the right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land u/s 5-A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. Dehors the right to file objection, the validity of the notification has to be considered. Failure to file objection to the notification u/s 3-C, therefore, cannot non-suit the writ Petitioners in this case.

14. Placing reliance on the aforesaid excerpt, the main thrust of the argument of the learned Counsel for the third Respondent, would be that the scope of enquiry

u/s 3-C of the Act is only to the limited extent of considering the objections if any which could be focussed to the effect that the proposed use of the land is for a purpose, other than the ones which are contemplated u/s 3-A(I) of the said Act. Here, the purpose is to lay down the road which is covered u/s 3-A(I) of the said Act and in such a case, the writ itself is a misconceived one.

15. Whereas by way of torpedoing and pulverizing the arguments of the learned Counsel for the third Respondent, the learned Senior Counsel for the Petitioner would submit that paragraph No. 8 of the Honourable Apex Court's judgment should not be read in isolation and it should be read in conjunction with the observations made in paragraph No. 5 of it, which is also extracted as under:

...So far as the question whether the impugned notification meets the requirement of Section 3-A(I) of the Act regarding giving brief description of land is concerned, we have already shown that even though plot numbers of lands in respect of each mouza are given, different prices of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the Petitioners would be unable to understand the impact of acquisition or to raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with law.

16. The learned Senior Counsel for the Petitioner would develop his argument to the effect that no part of the enactment should be rendered nugatory and otiose as exemplified in the Honourable Apex Court's precedent cited supra. According to him, Section 3-C of the Act would clearly and categorically highlight and spotlight the fact that during enquiry contemplated therein, the Petitioner as the owner of the land can very well object to the use of the land and that includes his right to object to the way in which the proposed road is going to be laid through the Petitioner's land.

17. Trite, the proposition of law is that even obiter of the Honourable Apex Court is binding on the High Court. Here, whatever stated by the Honourable Apex Court at paragraph No. 8 is only obiter, nonetheless, it is binding on this Court. As correctly pointed out by the learned Senior Counsel for the Petitioner, the entire judgment has to be read and on being read, it is pellucid and palpable that in paragraph No. 5 of the said judgment, the Honourable Apex Court held that no part of the enactment should be rendered nugatory or otiose. Here, conducting an enquiry u/s 3-C of the Act should not be an "empty formality" and that is what the Honourable Apex Court highlighted in the said judgment. For the

purpose of the disposal of this case, there is no necessity to delve deep into the legal principles envisaged in Section 3-C of the Act and ponder over the broad proposition, as to what is the actual scope and parameter of Section 3-C of the National Highways Act; suffice, to consider whether the plea of artificial curve in the said plan as objected to by the Petitioner, could be gone into or not during enquiry u/s 3-C of the Act. I am of the considered opinion that such objection could rightly be taken as the one within the ambit of the enquiry u/s 3-C of the Act as otherwise, there would be no purpose in conducting enquiry at all. Here, the Petitioner is not challenging as to whether the road should be laid or not, but the challenge is limited to the said artificial curve and the consequential proposal to demolish the buildings of the Petitioner.

18. In the Petitioner's objection, they have stated that they are having no objection for laying the road connecting Trichy and Thanjavur, but their main objection is relating to the artificial curve that is found crept in the road plan. Even though in very many words, they have not expatiated and delineated as to the motive behind such curve, the learned Senior Counsel for the Petitioner would submit that such an artificial curve is borne out of some ulterior motive only.

19. Be mat as it may, now then, a mere perusal of the said plan would clearly indicate and evince that in that proposed plan, there is a curve or bend in the road at the property of the Petitioner.

20. It is therefore obvious and axiomatic that the Petitioner has got the right to raise objections concerning the same which the District Revenue Officer should have concentrated and given his objective reasons on that. The ratiocination of the second Respondent in respect of his dismissive attitude towards the pleas of the Petitioner is missing in the impugned order. At this context, the non-furnishing of the copy of the remarks of the third Respondent to the Petitioner's objections before the passing of the impugned order gains prominence and significance.

21. At this juncture, the learned Counsel for the third Respondent would argue that absolutely there is nothing in Section 3-C of the said Act on par with Section 5-A of the Land Acquisition Act, that a copy of the remarks to the objections filed by the Petitioner, should be furnished to the Petitioner.

22. I am at a loss to understand as to how such an argument could be countenanced. No doubt, *ex facie* and *prima facie*, there is no version found incorporated in Section 3-C of the National Highways Act that a copy of the remarks furnished by the third Respondent should be given to the Petitioner. Nonetheless, in this case, the second Respondent did choose to furnish the objection to the third Respondent whereupon, the third Respondent also furnished their remarks with the help of an expert and it is a *fait accompli*, but the copy of the remarks of the expert which the second Respondent relied on in the impugned order was not furnished to the Petitioner so as to enable them to

challenge the remarks.

23. The learned Senior Counsel for the Petitioner would rely on the Full Bench decision of this Court in *R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector*, . An excerpt from it, would run thus:

18. Under the State Act, the statutory provisions in the shape of Section 4 and Rule 3 are silent regarding holding of any enquiry (either by the District Collector or by the authorised officer). The statutory provisions merely contemplate issuance of notice to show cause and the Rules only contemplate issuance of notice in Form I. However, such Form I specifically contemplates "the statement of objections, if any" received within the time stipulated will be enquired into "at a particular place" on "a particular date" at the office of "a particular office", to be specified in such notice. The Form-I further contemplates that the person interested is at liberty to appear and to adduce any oral and documentary evidence in support of his objection. It is no doubt true that such a notice in the statutorily prescribed form can be considered as part of the Rules. However, the procedure to be followed by the authorised officer is not specifically laid down, save and except as contained in Section 4(3)(b). This clause only contemplates that the officer authorised shall make report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. It further contemplates that the District Collector may pass such orders as he may deem fit after considering such report. The provisions contained in the Act, the Rules or in Form-I do not specifically envisage as to which record will be placed before the District Collector. Similarly the provisions are silent as to whether the copy of report of the authorised officer is required to be furnished to the objectors. The principles of natural justice regarding furnishing of copy of report can be considered as super added to such provisions. It cannot be said that merely because the Form-I does not specifically prescribe any further opportunity, such opportunity is impliedly prescribed. Since the Central Act had specifically and in detail made certain provisions, it is reasonable to conclude that the Central Act has exhaustively laid down the manner in which and the extent of principles of natural justice is required to be complied with and impliedly excluded any other extension of principles of natural justice; whereas under the State Act the statutory provisions and the Rules being silent, the scope and extent of natural justice to be followed need not be confined to whatever has been described in the Form-I.

39. It was submitted on behalf of the State Government that since specific provisions had been in Section 4 and Rule 3 and particularly in Form I, it would not be appropriate to incorporate any other principle of natural justice.

A similar contention had been repelled by the Supreme Court in the decisions in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and *S.L. Kapoor Vs. Jagmohan and Others*, . In the later decision, relying upon the decision reported in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , it was observed:

10. ...We are unable to agree with the submission of the learned Attorney General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. This was also the view taken in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , where it was observed (at p.316):

We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation.

24. Over and above that, he would also cite one other decision in *Sundaravalli Ammal v. The Government of Tamil Nadu* reported in 2008 (2) CTC 241, which would reiterate the views expressed in the earlier Full Bench decision cited supra. An excerpt from it, would run thus:

11) We hold that having regard to the dictum of the Full Bench decision reported in *R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector*, , the Division Bench ought to have applied the ratio laid down in the said decision and disposed of the matter. If at all the Division Bench felt any doubt as to the correctness of the said Full Bench decision, in all fairness the Division Bench could have directed the registry to place the matter before the learned Chief Justice for his consideration as to whether a further reference is called for referring the issue to a Larger Bench.

12) Since we have found as stated in paragraphs of this Order that the conclusion of the Full Bench decision reported in *R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector*, , has laid down the law appropriately and that there is no flaw in the said decision, we hold that the order of reference to a Larger Bench is uncalled for. The said Full Bench decision is therefore binding on the Division Bench. We accordingly, direct the registry to place the matter before the Division Bench to decide the Appeals on merits.

25. It is therefore clear from the aforesaid two Full Bench decisions that even though in the statute, there is no express provision for furnishing copy of the said remarks referred to above, yet the principles of natural justice warrant such furnishing of the copy of the remarks to the Petitioner so as to enable them to effectively put forth their case before the second Respondent.

26. At this juncture, the learned Senior Counsel for the Petitioner cited paragraph No. 37 of the aforesaid decision in *R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector*, and it is extracted hereunder for ready reference:

37) The desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land obviously being very limited, the Court in each case is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the report and affording further opportunity to the land owner to make a further representation is obviously to pinpoint any deficiency in the report of the authorized offer. If any particular aspect has been highlighted by the land owner and has not been considered by the authorised officer, the land owner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the authorised officer has considered the relevant because a copy of such report is not furnished and no further opportunity is given to the land owner, may not be a ground to quash the land acquisition proceedings. On the other hand, if important aspects, which have been highlighted by the land owner, have been ignored by the authorised officer, it may be reasonable to infer non- furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be construed that as a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it is sufficient to quash such acquisition. Ultimately the Court has to judge the prejudice caused to such person by keeping in view the facts and circumstances in particular case.

27. Placing reliance on the aforesaid excerpt, the learned Senior Counsel for the Petitioner would develop his argument that the Court while scrutinizing the records as well as the validity of the impugned order, could very well see as to whether in a particular case in-volved such non-furnishing of the report is fatal or not and it differs from case to case. However, according to him, so far this case is concerned, such non-furnishing of such copy is fatal because here the objection is relating to an artificial curve as well as the noise pollution etc. and the expert allegedly gave his opinion and it was accepted by the second Respondent, but the copy of it was not given to the Petitioner. I could see considerable force in the submission of the learned Senior Counsel for the Petitioner that this is a case which warranted the furnishing of the said report to the Petitioner so as to enable him to meet the comments and remarks in the report passed as against the objections of the Petitioner.

28. The learned Senior Counsel for the Petitioner also placed reliance on decision of this Court in AL. Ramanathan Amutha and Co. Vs. The Government of India and National Highways Authority of India, . An excerpt from it, would run thus:

20) It is trite that any authority, particularly quasi-judicial authority, who

exercises his powers is required to spell out the reasons for his conclusion irrespective of the fact whether the conclusion is subject to appeal, revision or judicial review. The extent and nature of reasons would depend on particular facts and circumstances and those reasons must be clear and explicit so as to indicate that the authority concerned has given due consideration to the points in controversy. More so, the need for recording reasons is greater in a case where his order is based by an order of other authority. The requirement of consideration of objection mandated in the Act is not an empty formality and as such, the second Respondent ought not to have rejected the Petitioner's objections simply based on the technical opinion given by the Project Director. To put it otherwise, the second Respondent should have restrained himself from considering the Petitioner's objections simply for the sake of doing. This is because it is not sufficient if the rule of law is followed in letter and it should be followed in spirit as well in a constructive manner. In addition to relying on the Project Director's technical opinion, the second Respondent should have also applied his mind and dealt with the Petitioner's objections one by one and should have arrived at his conclusion with due reasoning in a speaking manner. It has been held in a catena of decisions of the Supreme Court and this Court that spelling out of reasons in an administrative decision is a rule of natural justice. It is a well settled principle that reasoning is the heartbeat of every conclusion becomes not only meaningless but also lifeless. The object behind spelling out reasons is that the affected party should know as to why the decision has gone against him. One of the fundamental principles of natural justice is spelling out reasons for the order made even in rejecting the objections. At this juncture, it would be very much appropriate to state that a very recent judgment of the Supreme Court in the case of Director, Horticulture, Punjab and Ors. v. Jagjivan Parshad AIR 2008 SCW 2858, adds strength to this settled proposition of law and the relevant portions of which are extracted as under:

Reasons introduce clarity in an order. On plainset consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its minds, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court; judgment not sustainable.

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salu-tary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

29. The above excerpt would clearly highlight and spotlight that when an authority u/s 3-C of the Act, wants to rely upon the view expressed by the third Respondent, then there should be reason set out in support of the same. Here, the perusal of the impugned order does not reveal or demonstrate that for what reasons, the views of the expert was accepted and the objections of the Petitioner was rejected.

30. At this juncture, it is just and necessary to extract certain excerpts from the said impugned order:

Objections:

1. The Objector stated that sufficient lands are available on the opposite side adjoining the existing Highways. It is also stated that when free lands without any building or construction are available for widening, there is absolutely no need for acquiring the land belonging to the University.

2. That he stated that from the plan it is very apparent that instead of following a straight path, the road takes a bend near the University and again straightens after crossing the University. It is also stated that there is a basic defect in the alignment of the highway and already representations have been given with proof regarding the same.

3. That he stated that the reason for bending the road near the University so as to enter into the University area is not clear at all. It is also stated that the proposed design will seriously affect the functioning of the University. Further it is stated that in these circumstances, the land belonging to the University cannot be acquired.

4. That he stated that the proposed alignment as per the drawing obtained from the National Highways Authority clearly evidences the curve towards the University premises on the Vallam side at chainages of 98.8 and 100.2 on the Trichy side, leaving a vast space on the other side of the proposed road.

5. That he stated that SASTRA is a University declared as a Deemed University by the Central Government u/s 3 of the University Grants Commission Act, 1956. He also said that the Central Government has notified SASTRA as Centre for excellence and the University has been conducting research work in the joint venture of the Central Government, TIFAC-CORE in Advanced Computing and Information Processing Centre for Nanotechnology & Advanced Biomaterials, Centre for Advanced in Indian System of Medicine (CARISM), National Facilities in Engineering and Technology with Industrial Collaboration (NAFETIC) etc.

31. The aforesaid excerpts in the impugned order summarised the objections relating to the artificial curve and other objections raised by the Petitioner in the plan, for which the second Respondent in page No. 5 of its report would observe thus:

1) To the objections No. 1 to 5:

The Project Director has stated that the present design has optimum utilization of existing roadway with minimum land acquisition and the Project Highway, is designed for 100 km/hr and the design is carried out as per IRC specifications. He further stated that the proposed alignment is the most feasible alignment in terms of financial and geometric considerations and proposing a totally new alignment alternative is suggested will be costly and will result in abandoning the existing roadway. This new alignment will also result in additional land acquisition and additional cost implication to the Government of India.

32. As such, the above excerpt is the summary of the remarks filed on the side of the third Respondent, but the copy of the report was not given to the Petitioner. Ultimately, in the impugned order at page No. 6, the second Respondent observed thus:

I) With regard to the suggestion made by the Petitioner for alternative alignment, the Project Director, NAHI, Tiruchy has stated that the present design has optimum utilization existing Roadways with minimum land acquisition. The Project Highway is designed for 100 K.m/Hr and the design is carried out as per IRC specifications. The alignment will not cause Fatal accidents. The proposed alignment is the most feasible alignment in terms of financial and geometrical consideration. Proposing a totally new alignment will be costly and will result in abandoning of the existing Roadway. The new alignment will also result in additional land acquisition and additional cost implication to the Government of India.

33. It is therefore clear from the aforesaid excerpts that the authority simply accepted the view of the third Respondent and rejected the objections of the Petitioner without citing any reason. At page No. 6, it is simply found stated as follows:

I agree with the remarks of the Project Director, NHAI, Tanjore. Hence, the objection made by the Petitioner is negated and also rejected.

34. Put simply, without independently applying the mind, the second Respondent rejected the objections of the Petitioner. As such, my above discussion would exemplify and demonstrate that the second Respondent without adhering to the principles of natural justice, passed the impugned order which warrants quashment on that ground itself.

35. With a view to highlight that non-furnishing of the copy of the remarks furnished by the third Respondent is material, I would like to observe further thus:

The learned Senior Counsel for the Petitioner would place reliance on the fact that as per the proposed plan, the compound wall of the Petitioner's premises would be the mid-line of the proposed road, whereas now the existing road is far away from the compound wall and that itself is the indicative of the fact that there is an artificial curve. While exercising the jurisdiction under Article 226 of

the Constitution of India, when such a glaring defect in the plan is highlighted before this Court, this Court could visualize that the grievance of the Petitioner that there is an artificial curve, is not one fraught with gobble de gook, gibberish, recondite, abstruse uncanny statements. The contention of the Petitioner that unless there occurs such an artificial curve in the plan, the existing compound wall cannot constitute the middle line of the proposed road., deserves deep scrutiny by the second Respondent. However, I do not finally decide that what the Petitioner contended, is correct. The second Respondent should have necessarily applied his mind on that aspect and given a finding either way. Had the proposition as put forth by the learned Counsel for the Petitioner was not at all factually correct, then that would have been referred to in the impugned order itself by citing factual details. As pointed out by the learned Counsel for the third Respondent, if the proposal of the Petitioner is accepted, it would affect others obviously, than those facts should have been detailed in the impugned order itself. De hors that even in the counter, I could not see no such details about other persons and the owners of the buildings who would be allegedly affected if the suggestion of the Petitioner is accepted. As such, without deciding factually, I would like to observe that the impugned order is niggard and bereft of details and accordingly, it falls foul of the principles of natural justice warranting quashment as it was passed by the second Respondent without *au fait* with law and *au curante* with fact.

36. The learned Counsel for the third Respondent also cited various decisions as under:

(i) In *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, . An excerpt from it, would run thus:

10. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weight the public interest vis-a-vis the private interest while exercising the power under Article 226-indeed any of their discretionary powers.

37. There could be no quarrel over the proposition of law as found enunciated in the aforesaid decision as it is clear that the current trend of thinking is that for the greater good of public, there should be sacrifice by the individual. My mind is redolent and reminiscent of the famous maxim "*Privatorum conventio juri publico non derogat.*"

38. But, here, the Petitioner is in no way objecting to the laying of the road, but

what his objection is that there is an artificial curve in the proposed plan which is actuated by ulterior motive and not by actual requirements by any standard including Indian Road Congress.

39. An excerpt from the decision in *Krishnaveni and Others Vs. The Union of India (UOI) and Others*, , would run thus:

23. The Petitioners sought to challenge the veracity and correctness of the detailed finalized plan of National Highways Authority of India, in my view, the said submission is devoid of merits. The findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by this Court in exercise of their power under Article 226 of the Constitution, followed *Akhil Bharat Gosewa Sangh Vs. State of A.P. and Others*, wherein in para-59, it was held thus:

59. The Appellant sought to challenge the veracity and correctness of the figures given in the report of the Central Government as well as in the quinquennial census. In our view, this submission is devoid of merit. It is now well settled by various decisions of this Court that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by the courts in exercise of their power under Article 226 of the Constitution or by this Court under Article 136 or 32 of the Constitution..

40. Placing reliance on the aforesaid decision, the learned Counsel for the third Respondent would develop his argument that the findings of the expert bodies in technical and scientific matters would not ordinarily be interfered with by this Court in exercise of their power under Article 226 of the Constitution of India. There could be no second opinion over the aforesaid decision. But, my above discussion supra would demonstrate and indicate as to how in this case, the details are missing and there is no objectivity in addition to the order having been passed without adhering to the principles of natural justice.

41. The learned Counsel for the third Respondent also cited the decision in *M. Haridass and Others Vs. The State of Tamil Nadu and Others*, . An excerpt from it, would run thus:

59. Therefore, it is made clear that a public notice in writing with the signature of the officer concerned be made widely known in the locality by affixing in the conspicuous public places or publishing the same by beat of drum or by advertisement in a local newspaper, etc.,. - It is significant to note that as far as issuance of show cause notice to the owner or person interested in the opinion of the Government, neither the Act nor the Rules prescribe any method to be followed, which means that if such show cause notice is sent to the owner or persons interested in any acceptable form, the same is certainly a proper method of service. Even in this way service of show cause notice and public notice, under Tamil Nadu Act 10 of 1999 is totally different from Section 4(1) of the Central Act 1 of 1894 which contemplates the notification to be published in the Official Gazette stating that it appears to the appropriate Government that such land in the locality is needed for public purpose in addition to that, it is the duty of the

Government to publish the same in two daily newspapers circulating in that locality of which at least one should be in regional language. In addition to that, it is the duty of the District Collector to cause public notice of substance of such notification at convenient places in the said locality. Such stringent provisions is not available either u/s 3(2) of Tamil Nadu Act 10 of 1999 or under Rules 3 and 4 of the Rules framed thereunder.

60. The term "hearing" as contemplated u/s 3(3) of the Act cannot be equated to the term "hearing of objections" u/s 5-A of the Central Act 1 of 1894. Section 5-A(2) states as follows:

In the absence of any such stringent provision as it is seen in the Central Act 1 of 1894 especially u/s 5(A)(2), in the Tamil Nadu Act 10 of 1999, there is no difficulty in coming to the conclusion that the intention of the law makers in respect of Tamil Nadu Act 10 of 1999 while taking into consideration the basis object of enacting such law, is not to have an enquiry of the sort provided for under the Central Act 1 of 1894, but passing orders after hearing and considering the objections.

42. Placing reliance on the aforesaid decision, he would submit that the Petitioner cannot equate the enquiry u/s 5-A of the Land Acquisition Act with that of the one u/s 3-C of the National Highways Act. In my considered opinion, there is much of a muchness which could be seen in Section 5-A of the Land Acquisition Act as well as in Section 3-C of the National Highways Act; however, verbatim both are not one and the same.

43 . So far the adherence to the principles of natural justice, there is no question of arguing that two different types of principles of natural justice are found embedded u/s 5-A of the Land Acquisition Act visa-vis Section 3-C of the National Highways Act.

44. The learned Advocate for the third Respondent as well as the learned Advocate for the proposed fourth Respondent (in M.P(MD) No. 2 of 2008), would in unison put forth the plea to the effect that quite contrary to the time limit of 21 days contemplated u/s 3-C of the Act, the Petitioner filed the objections belatedly. According to them, the Central Government Gazette was dated 17.12.2007; whereas the objection was filed only on 21.01.2008, obviously after 21 days. By way of torpedoing the arguments as put forth by the learned Advocates for the third Respondent and the proposed fourth Respondent, the learned Senior Counsel for the Petitioner would invite the attention of this Court to Section 3-A as well as Section 3-C of the Act and develop his argument that mere notification in the Gazette would not meet the requirements of Section 3-A of the Act as Section 3-A(3) of the Act would contemplate the publication of the substance of the notification in two local newspapers as a condition precedent for coming into force of the notification. As such, from the date of publication of the substance of the notification in the newspapers, the period of 21 days should be calculated and if calculated, in this case, the objection filed by the Petitioner

was in time. He would also correctly draw the attention of this Court that in "The Hindu" Newspaper, the substance of the notification dated 17.12.2007 was published on 31.01.2008 and even before such publication in the newspapers, on 21.01.2008 itself, in response to the communication sent to the Petitioner by the third Respondent, objection was filed by the Petitioner and after such publication in the newspapers on 19.02.2008, another objection reiterating the earlier objection, was filed by the Petitioner. Hence, by no stretch of imagination, it could be stated that the objection filed was not within time. However, the learned Advocates for the third Respondent as well as the proposed fourth Respondent, would try to interpret Section 3-C of the Act to the effect that the period of 21 days should be calculated from the date of notification in the Gazette and not the date of publication of the substance of the notification in the newspapers. In fact, Mr. G.R. Swaminathan, learned Counsel for the proposed fourth Respondent, would place reliance on the following words " ... from the date of publication of the notification under Sub-section (1) of Section 3-A, ..." in Section 3-C of the Act and develop his argument that in Section 3-C of the Act, there is no reference to Section 3-A(3). In my opinion, such an interpretation cannot be countenanced for the reason that the words "notification under Sub-section (1) of Section 3-A,..." is by way of describing the notification and not the term "publication". The word "publication" refers to the publication u/s 3-A(3) of the Act as correctly pointed out by the learned Counsel for the Petitioner. As such, in this view of the matter, the contentions raised on the side of the third Respondent cannot be countenanced as correct. At this context, the maxim "*Utres magis valeat quam pereat*", could be recollected. In regard to this maxim, the fruitful discussion could be seen in the famous treatise "Maxwell on The Interpretation of Statutes" (Twelfth Edition by P. St. J. Langan at page No. 45) as under:

If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. "Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

In accordance with these principles, the court should avoid interpretations which would leave any part of the provision to be interpreted without effect; will not narrow enactments designed to prevent tax evasion; may sometimes find it necessary to depart from the principle that *mens rea* is an essential ingredient of criminal offences; and may give a wide sense to words in a penal statute."

Over and above that, the principle of *bonam partem* also could be cited in support of the interpretation referred to by me *supra*.

45 . The learned Counsel for the third Respondent would cite the decision in Dr. S. Ajay Venkatesh v. Union of India rep. by its Secretary to Government, Ministry of Shipping Road Transport and Highways, New Delhi-1 and Ors. reported in 2007 (3) CTC 431 : 2008 W.L.R. 16. An excerpt from it, would run thus:

7) Therefore there is no scope for the Competent Authority under the National Highways Act, to act otherwise than in accordance with the provisions of the Act. If a Statutory Authority is obliged to perform a function in a particular manner by the Statute, he shall perform the same only in accordance with the Statute and not otherwise. Hence, there cannot be a direction to the Respondents to provide lands to the Petitioner in lieu of compensation, since there is no provision in the Act for the Respondents to do so....

10. Therefore, the question as to whether there are any standard norms and whether such standard norms are actually exceeded, is not a subject matter for judicial review. The acquisition of a land for National Highways can be objected to only on certain well established principles. No standard norms are prescribed either by the Act or by any Executive Instructions issued in pursuance of the provisions of the Act. Therefore the standard norms, even if there are any, cannot be enforced through a Court of law, as they confer no right upon the individual whose lands are sought to be acquired.

46. Absolutely, there could be no difference of opinion over this decision also. In fact, as per Section 3-C of the Act, the second Respondent was expected to adhere to the principles of natural justice in stricto sensu for the reasons already cited supra, but he failed to do.

47. In view of the aforesaid reasons, Point No. (i) is decided to the effect that this Court has got jurisdiction in the facts and circumstances of the case to entertain the writ petition under Article 226 of the Constitution of India and point Nos. (ii) and (iii) are decided to the effect that the principles of natural justice have been violated in passing the impugned order by the second Respondent, which warrants interference.

48. In the result, while allowing the writ petition, I would like to pass the following direction:

On receipt of a copy of this order, the second Respondent shall do well to see that he is furnishing to the Petitioner a copy of the remarks/report furnished by the third Respondent as against the objections filed by the Petitioner, within a period of one week, whereupon, within a week thereof, the objections could be filed by the Petitioner before the second Respondent and thereupon, the second Respondent within a period of fifteen days shall pass orders after giving due opportunity of being heard to the Petitioner and the third Respondent. The Petitioner shall co-operate with the second Respondent in complying with this order in letter and spirit, Consequently, the connected Miscellaneous Petitions are also closed. No costs.