IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 39763977 OF 2020
(arising out of SLP(C) Nos. 1338413385/2019)

The Project Director, Project
Implementation Unit …Appellant(s)

Versus

P.V. Krishnamoorthy & Ors. …Respondent(s)

With

CIVIL APPEAL NOS. 39783980 OF 2020
(arising out of SLP(C) Nos. 1609816100/2019)

CIVIL APPEAL NOS. 39813984 OF 2020
(arising out of SLP(C) Nos. 1857718580/2019)

CIVIL APPEAL NOS. 39853991 OF 2020
(arising out of SLP(C) Nos. 1916019166/2019)

CIVIL APPEAL NO. 3992 OF 2020
(arising out of SLP(C) No. 18586/2019)

CIVIL APPEAL NOS. 39933994 OF 2020
(arising out of SLP(C) Nos. 17751776/2020)



CIVIL APPEAL NOS. 39953998 OF 2020
(arising out of SLP(C) Nos. 17771780/2020)

CIVIL APPEAL NOS. 39994001 OF 2020
(arising out of SLP(C) Nos. 17811783/2020)

JUDGMENT

A. M. Khanwilkar, J.

1. Leave granted.

2. These appeals emanate from the common judgment and order1 of the High Court of Judicature at Madras 2 holding the notifications issued under Section 3A(1) of the National Highways Act, 19563 for acquisition of specified lands for development/construction of ChennaiKrishnagiriSalem (National Corridor) 8 Lanes new National Highway4 (NH179A and NH179B) being part of the larger project "Bharatmala Pariyojna – Phase I5", as illegal and bad in law on the grounds stated in the impugned judgment.

THE PROJECT 1 dated 8.4.2019 in W.P. Nos. 16146/2018, 16630/2018, 16961/2018, 19063/2018, 19385/2018, 20014/2018, 20194/2018, 20625/2018, 20626/2018, 20627/2018, 20647/2018, 20764/2018, 20969/2018, 21242/2018, 22334/2018 and 22371/2018 – for short, "the impugned judgment" 2 for short, "the High Court" 3 for short, "the 1956 Act" 4 for short, "C-K-S (NC)" 5 for short, "the Project"

3. The Project (Bharatmala Pariyojna Phase I) has been conceived as a new umbrella program for the highways sector that focuses on optimising efficiency of freight and passenger movement across the country by bridging critical infrastructure gaps through effective interventions like development of Economic Corridors, Inter Corridors and Feeder Routes (ICFR), National Corridor Efficiency Improvement, Border and International connectivity roads, Coastal and Port connectivity roads and Greenfield expressways, traversing across around 24,800 kms in PhaseI. In addition, Phase I also includes 10,000 kms. of balance road works under National Highways Development Program6. The estimated outlay for Phase I came to be specified as Rs.5,35,000 crores spread over 5 years. The objective of the Program is stated as optimal resource allocation for a holistic highway development/improvement initiative. The two distinguishing features are said to be effective delegation in appraisal/approval of individual project stretches and encouraging State Governments to participate in the development process through 'Grand Challenge'. This Project intends to further the objective of the NHDP, which was being implemented 6 for short, "NHDP" in the past and had reached level of maturity. Resultantly, it was thought appropriate to redefine road development and have a macro approach while planning expansion of the national highways network with focus on recasting road development by bridging critical infrastructure gaps. The Program envisages a corridor approach in place of the existing packagebased approach which has, in many cases, resulted in skewed development referred to therein, causing impediment in seamless freight and passenger movement.

4. The components and outlay of the Project, as approved by the Cabinet Committee on Economic Affairs7 to be implemented over a period of 5 years i.e. 20172018 to 2021-2022, provide for the breakup of length of the different components and the outlay

therefor. Although the Project stretches had been identified taking into account integration of economic corridors with the ongoing projects under NHDP and infrastructure asymmetry in major corridors, an express discretion has been bestowed on Minister – Road Transport & Highways to substitute/replace upto 15% length of 24,800 kms. for the Project (PhaseI of program) by other suitable projects, if development of certain identified 7 for short, "the CCEA" stretches cannot be taken up on account of issues pertaining to alignment finalisation, land availability and other unforeseen factors whilst retaining the target and budget proposed for Phase I.

5. In furtherance of the Project, a meeting was held on 19.1.2018 under the Chairmanship of Secretary (Road Transport & Highways) for optimising Economic Corridors in the State of Karnataka, Andhra Pradesh, Tamil Nadu and Kerala identified under the Project, which was also attended by Member (P), National Highway Authority of India8, Joint Secretary of the Ministry of Road Transport & Highways9 and CGM (T), NHAI. The members deliberated upon the micro aspects of the section delineated as ChennaiMadurai in the State of Tamil Nadu, as was done in respect of other sections of the concerned State. After due deliberations and considering all aspects, the Committee proceeded to record its unanimous opinion in respect of stretch/section referred to in the Project – CKS (NC) and ChennaiMadurai (Economic Corridor)10 in the State of Tamil Nadu, as follows: 8 for short, "the NHAI" 9 for short, "the MoRTH" 10 for short, "C-M (EC)" "2.4 ChennaiKrishnagiriSalem (National Corridor) & ChennaiMadurai (Economic Corridor):

(i) The traffic from Chennai bound to Salem/Coimbatore and Pallakad (Kerala) currently use the ChennaiKrishnagiri section of the Golden Quadrilateral (ChennaiBengaluru) and the KrishnagiriSalem section of the NorthSouth corridor or the ChennaiTindivanam-Ulundurpet section of the ChennaiMadurai Economic corridor and the UlunderpetSalem Intercorridor route, thereby congesting ChennaiKrishnagiri section of Golden Quadrilateral and ChennaiTindivanam (72,000 PCU) – Ulundurpet (47,000 PCU) section of the ChennaiMadurai Economic Corridor.

Accordingly, it was decided that instead of 6/8 laning of Tindivanum Trichy section, a crowflight greenfield alignment be developed between Chennai and Salem via Harur under National Corridor Efficiency Improvement. This will not only reduce the distance between Chennai and Salem/Coimbatore by 40 km but also diversify the traffic from the congested ChennaiKrishnagiri section of Golden Quadrilateral and Chennai Ulundurpet section of the ChennaiMadurai Economic Corridor.

(ii) It was also observed that instead of 6/8 laning of TovarankuruchiMelurMadurai section (64 km) of the ChennaiMadurai Economic Corridor, it would be better to develop TovarankuruchiNatham section (27 km) as the MaduraiNatham stretch is already being developed as a feederroute, which will reduce the Trichy Madurai distance by 8 km and would result into diversification of traffic from Tovarankuruchi to Madurai via Natham and via Melur." It was also decided in the said meeting that the CCEA shall be apprised of the proposed alignment in the upcoming biannual update.

6. In the backdrop of this decision, notifications under Section 2(2) of the 1956 Act came to be issued, declaring the stretch/section from Tambaram (Chennai) to Harur as NH179B and from Harur to Salem as NH179A. Consequent to such declaration, notifications under Section 3A(1) of the 1956 Act specifying the lands proposed to be acquired for the national highway(s), came to be issued for the concerned stretches/sections, which was also duly published in the local newspapers.

PROCEEDINGS BEFORE THE HIGH COURT

7. The notifications under Section 3A of the 1956 Act were challenged by the affected land owners and also by way of public interest litigation. In addition, in Writ Petition No. 21242/2018, the notifications issued under Section 2(2) of the 1956 Act declaring the concerned stretches/sections being NH179A and NH179B respectively, came to be challenged.

8. The High Court considered challenges to the stated notifications on diverse counts by way of a common judgment, which is impugned in these appeals. The High Court formulated 15 questions, which arose for its consideration in the context of the challenge to the respective notifications. The same read thus: "(i) Whether the Writ Petitions are maintainable, since all that has been done by the respondents is to notify their intention to acquire the lands by publishing a notification under Section 3A(1) of the Act and the petitioners cannot be stated to be aggrieved;

(ii) Whether the entire land acquisition proceedings are wholly without jurisdiction as a declaration under Section 2(2) of the Act enables only to declare an existing highway, as a National Highway and not for creating a National Highway from a nonexisting road or a plain land;

(iii) Whether if the project is allowed to be implemented without prior environmental clearance, would it be against the principles of sustainable development and would violate the provisions of the Articles 19, 46, 48A and 51A of the Constitution of India;

(iv) Whether there is a need for the proposed project Highway given the statistics regarding the Passenger Car Units in the existing three highways;

(v) Whether there is any hidden agenda for the proposed project and whether it was intended to benefit a chosen few;

(vi) Whether ChennaiSalem proposed highway project was not even considered as a viable proposal, when lots were invited under Bharat Mala Priyojana and Chennai-Madurai proposal was found to be viable resulting in appointment of the consultant (Feedback), could there have been a change of the project after appointment of the Consultant for a different project;

(vii) Whether the respondents who had originally notified the project between the Chennai and Madurai could have changed the same after the tender for awarding the consultancy contract was finalised for ChennaiMadurai Section;

(viii) What would be the impact of the proposed project on Forest lands, Water Bodies, Wild Life, flora and fauna as admittedly the proposed alignment passes through all these areas;

(ix) Whether public hearing is a prerequisite and should it precede any step that may be taken under the provisions of the Act;

(x) Whether public consultation which includes public hearing at site should have preceded the land acquisition proceedings or at what stage it is required to be done;

(xi) If the notification as initially notified by the Central Government (ChennaiMadurai) was modified is the draft feasibility report liable to be scrapped, as the award of consultancy contract was entirely for a different project;

(xii) Whether the report prepared by the Consultant (Feedback) contains plagiarized contents, whether it was prepared in great haste, replete with errors apparent on the face of the record and should the report be held to be an outcome of nonapplication of mind;

(xiii) Whether guidelines prescribed in the Indian Highway Capacity Manual were ignored while preparing the draft feasibility report;

(xiv) Whether on account of the reduction of the right of way in various sections including the proposed alignment, which passes through Forest area, whether the scope of the project stood totally amended and whether the respondents can proceed in the manner they propose to do.

(xv) Whether the feasibility report has failed to analyse the financial consequences of the ChennaiSalem express way becoming an additional toll way or competing road to the existing toll way and thus triggering a series of contractual obligations under the present concessional agreements that would get extended by 50 to 100% of the remaining period.

…..”

9. The High Court, at the outset considered the preliminary objection regarding maintainability of writ petitions being premature, as raised by the NHAI and the Union of India. In that, the stated notifications under Section 3A(1) were only expression of intention to acquire lands and all objections thereto could be considered by the designated authority at the appropriate stage. Further, the challenge to the said notifications under Section 3A could be entertained by the High Court only if the competent authority had taken recourse to that option as a colourable exercise of power. And it was not open to the Court to substitute its own judgment for the judgment of the Government as to what constitutes public purpose. The High Court noted that ordinarily, the constitutional

Courts would be loath to interdict any land acquisition process at the inception. However, it then went on to observe that the same is a selfimposed restriction. Whereas, the circumstances of the present case would warrant interference at the very threshold. Further, the land owners/losers cannot be made to wait till the final outcome of the decision of the competent authority and more so, when it is a case of highhanded action of the officials. The High Court noting the decision in State of Bombay vs. R.S. Nanji11 and Somawanti & Ors. vs. State of Punjab & Ors.12, observed that if the constitutional Court is convinced that the impugned notifications are the outcome of colourable exercise of power by the authorities concerned and the decision being replete with irrationality, unreasonableness and arbitrariness, ought to intervene at the threshold.

11 AIR 1956 SC 294 = 1956 SCR 18 12 AIR 1963 SC 151 = (1963) 2 SCR 774

10. The High Court then proceeded to examine the next point pertaining to the validity of notifications issued under Section 2(2) of the 1956 Act. The challenge on this count was founded on the argument that the prerequisite for issuing such notifications to declare a highway as a "National Highway", is that, it should be a preexisting State highway. For, in terms of powers conferred in Entry 23 of List I (Union List) of the Seventh Schedule, the Parliament is empowered to make a law limited to declaring an existing highway to be a "National Highway". Whereas, the State legislature has exclusive power to notify a new highway, as it alone is competent to enact laws concerning roads, bridges, ferries etc. not specified in List I. The argument regarding stated notifications under Section 2(2) of the 1956 Act being violative of Articles 257(2) and 254(4) of the Constitution, has been referred to in paragraph 43 of the impugned judgment. To wit, only the State Government is empowered to declare a land or a road to be a highway in terms of the Tamil Nadu Highways Act, 200113 and only such notified highway could be declared as a National Highway by the Central Government. At any rate, the Central Government cannot declare an open land passing 13 For short, "the 2001 Act" through the greenfields as a National Highway in exercise of power under Section 2(2) of the 1956 Act and consequently, the power under Section 3A of the 1956 Act cannot be invoked in respect of such open lands. The High Court negatived this argument of the writ petitioners by relying on the decision of the same High Court in B. Nambirajan & Ors. vs. District Collector, Kanyakumari District, Nagercoil & Ors.14, which had followed the exposition in Jayaraman & Ors. vs. State of Tamil Nadu & Ors.15. The High Court opined that where the Central Government is satisfied that for public purpose, any land is required for building, maintenance, management or operation of a National Highway or part thereof, it may, by a notification in the official gazette in exercise of powers under Section 2(2) of the 1956 Act issue declaration and also initiate follow up action including notification under Section 3A. In substance, it is held that the Central Government had sufficient power to acquire even open greenfields land for the purposes of construction of National Highways or part thereof. (This part of the decision has 14 CDJ 2018 MHC 2862 15 2014 SCCOnline Madras 430 been challenged by the appellant in appeal arising out of SLP(C) No. 18586/2019).

11. The High Court then proceeded to examine point No. (iii) as to whether prior environmental clearance was imperative before issuing notifications under Section

3A(1) and at what stage of acquisition proceedings such environmental clearance ought to be made precondition. For dealing with this contention, the High Court noticed decision of the Division Bench in J. Parthiban & Ors. vs. State of Tamil Nadu & Ors. 16 and of this Court in Karnataka Industrial Areas Development Board vs. C. Kenchappa & Ors.17. The decision of the same High Court in M. Velu vs. State of Tamil Nadu & Ors. 18 was also noticed, as also, the notification issued by the Ministry of Environment, Forest and Climate Change19, dated 14.9.2006, to hold that prior environmental clearance/permission ought to have been obtained before issuance of notifications under Section 3A of the 1956 Act. The High Court then noted the principles expounded by this Court concerning doctrine of "public trust" in M.C. Mehta vs. 16 AIR 2008 Mad 203 17 (2006) 6 SCC 371 18 2010 SCCOnline Madras 2736 19 for short, "the MoEF" Kamal Nath & Ors.20 and M.C. Mehta vs. Union of India & Ors.21. It also noticed another decision of this Court in Raghbir Singh Sehrawat vs. State of Haryana & Ors. 22 and the exposition of Courts in the United States of America in Commonwealth of Massachusetts vs. James G. Watt23, California vs. Watt24, Roosevelt Lathan and Pearline Lathan, his wife, vs. John A. Volpe, Secretary of the United States Department of Transportation25, Arlington Coalition on Transportation vs. John A. Volpe, Secretary of Transportation26 and Jones vs. District of Columbia27, and concluded that being a welfare State, the authorities while implementing the project which, in the opinion of the Government, is in public interest, cannot turn a nelson's eye to reality and forget that protecting agriculture is equally in public interest. It went on to observe that the interpretation of the 20 (1997) 1 SCC 388 21 (2004) 12 SCC 118 22 (2012) 1 SCC 792 23 716 F.2d.946 (1938) 24 683 F.2d 1253 (9th Cir. 1982) 25 455 F.2d 1111 26 458 F.2d.1323 (1972) 27 499 F.2d.502 (1974) relevant provisions in Indian context should lean towards protecting agriculturists and for that reason, went on to observe that if the Project is allowed to be implemented without prior environmental clearance, it would be a gross violation of the principle of sustainable development and in particular, provisions of Articles 19, 21, 46, 48A and 51A of the Constitution of India.

12. The High Court then proceeded to consider point Nos. (iv) to

(vi) together. It noted the contention of the writ petitioners that until the Project (Bharatmala Pariyojna – Phase I) was reviewed on 24.1.2018 and when the Minister of State – MoRTH replied to questions in Rajya Sabha about new highway projects under various stages including Detailed Project Reports 28 stage on 5.3.2018, there was no inkling about the proposed Project made applicable to stretch/section – CKS (NC). Whereas, the stretch/section identified in the Project was – CM (EC), which was completely different. Moreover, there was no tangible basis before the members of the Committee on 19.1.2018, to abruptly change the ChennaiMadurai (Economic Corridor) CM (EC) project to one as ChennaiKrishnagiriSalem (National Corridor Efficiency Improvement) – CKS (NC) or as greenfield 28 for short, "the DPR" expressways. No document/material had been produced before the Court in support of the Minutes recorded on 19.1.2018 to justify CKS (NC) section. If the authorities intended to make such a change, they ought to have obtained prior approval/clearance from the Public Investment Board 29 and in principle approval of the Ministry of Finance and the Comptroller and Auditor General30 in that regard. No audit of project formulation by

CAG was done nor the alignment report and approval given was as per the DPR guidelines of the MoRTH. Further, the Consultant – M/s. Feedback Infra Pvt. Ltd. appointed for the original Project concerning section CM (EC), was continued for the changed stretch/section without following the tendering process as predicated by the MoRTH and the Post Award Portal Guidelines for procurement, preparation, review and approval of DPR etc. The High Court noted that the appellants herein (State authorities/NHAI/Union of India) had supported their action regarding the changed/modified project on three grounds – (i) existing capacity is fully utilised; (ii) there will be economic development in general; and (iii) there will be 29 For short, "the PIB" 30 for short, "the CAG" reduction in carbon foot print, as the length of subject stretch/section was at least 40 kms. less than the corresponding section falling under CM (EC), as originally conceived. The High Court noted that the Central Government had not filed any counter affidavit on the subject matter. The counter affidavit was filed by the NHAI, which did not touch upon the factual matrix pointed out by the writ petitioners regarding the circumstances in which the stretch/section was changed to CKS (NC) except asserting that it was a policy decision. The High Court was conscious of the fact that the issues raised by the writ petitioners were quasitechnical issues, but clarified that as to whether the stretchsection was part of the Project (Bharatmala Pariyojna – Phase I) at the first instance, is a question of fact, which ought to have been answered and clarified by MoRTH. The Court, after referring to the original Project, noted that CKS (NC) section does not find place therein. Instead, CM (EC) had been mentioned at S.No. 19 of the original Project. Further, there was nothing on record to indicate that the changed stretch/section had been approved by the Cabinet Committee or the Public Private Partnership Appraisal Committee 31, as mandated in the 31 for short, "the PPPAC" guidelines issued by the CAG. Thus, the High Court held that the decision was taken by the Committee in hot haste and without following necessary formalities and standard operating procedures specified in that regard. As a matter of fact, no proper scrutiny of all relevant facts and more particularly, possible alternatives had been explored before a final decision to implement such a major project was taken (costing around Rs.10,000 crores, covering around 277 kms. and construction of a new National Highway traversing through greenfields). At the same time, the High Court rejected the allegation about the hidden agenda for such a change of stretch/section from CM (EC) to CKS (NC). The High Court found that the allegations regarding hidden agenda to favour a private limited company remained unsubstantiated.

13. The High Court then proceeded to examine point No. (vii) regarding the continuation and appointment of the Consultant in respect of the changed stretch/section i.e. CKS (NC), although its initial appointment was in respect of the stretch/section originally conceived i.e. CM (EC). The High Court recorded disparaging and condemnatory remarks in reference to continuation of the same Consultant for the changed stretch/section without following proper procedure. The High Court also accepted the criticism regarding Draft Feasibility Report32 prepared by the Consultant being bereft of any credible material/information, but was replete with mechanical reproduction of contents resembling with some other projects. The argument of the Consultant that no other bidder (Consultant) had challenged its appointment in respect of changed stretch/section CKS (NC), came to be rejected. The High Court proceeded to hold that

the authorities ought to have invited fresh tenders and offers from the qualified Consultants as per the standard operating procedure and ought not to have continued with the same Consultant for the entirely different stretch/section – CKS (NC).

14. The High Court then considered point No. (viii) regarding impact assessment and in-principle approval to study the impact of the Project on flora and fauna. The High Court noticed that the changed stretch/section was to pass through the forest areas to the extent of 10 kms., yet no prior permission of the Forest Department had been obtained. Further, no impact assessment 32 For short, "the DFR" analysis was done before taking decision to change the project to CKS (NC). Also that in the name of the subject project, 100 trees were unauthorizedly felled from the lands in close proximity with the proposed alignment in the guise of allowing some persons to remove the damaged trees. The Court also took into account the inaction of the authorities in some other locations in the neighbourhood, failing to remove encroachments in the forest area and the firm stand of the Forest Department for denying permission to erect even a small bridge to facilitate the villagers to cross Moiyar river to reach their residence. Taking judicial notice of that fact, the High Court proceeded to assume that it was most unlikely that permission will be given for construction of a new National Highway passing through the forest area. This aspect had not been seriously considered by the appropriate authority. The decision, however, was based on a report which was prepared mechanically on the basis of geomapping without physical verification on site. Similarly, the proposed alignment was without collecting data of Passenger Carrying Units 33 or ascertaining the correctness of data (referred to in the report) collated from the toll plazas. At the end, the High Court noted 33 for short, "the PCUs" that the procedure adopted by the NHAI in asking the Consultant to carry out the work, which was never the scope of the bid document, by an oral arrangement, was unacceptable. It then observed that if the Central Government was still of the opinion that the subject project concerning section – CKS (NC) is required to be implemented, then it must comply with the required formalities of obtaining requisite environmental and forest clearances/permissions, after undertaking comprehensive study of the environmental impact.

15. The High Court then proceeded to examine point Nos. (ix) and (x) together and concluded that a fair procedure ought to be adopted and the fact that there would be delay if such procedure is followed, will be of no avail. Prior environmental clearance must be obtained after a public hearing is held, before the project is implemented. The High Court then went on to examine the remaining points for consideration separately; and concluded as follows: "101. For all the above reasons, we are of the considered view that the project highway as conceived and sought to be implemented is vitiated on several grounds as mentioned above and consequently, the notifications issued for acquisition of lands under Section 3A(1) are liable to be quashed.

102. In the result, the Writ Petitions are allowed and the land acquisition proceedings are quashed.

103. In view of the above, Crl.O.P. No. 22714 of 2018 is closed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

104. During the pendency of these Writ Petitions, when we heard the cases, the learned counsel for the land owners pointed out that the revenue records were mutated and stood transferred as Government lands. This had happened even much prior to issuance of the Notification under Section 3D of the Act. We had pointed out that such an action could not have been initiated, as, by issuance of a Notification under Section 3A of the Act, the Government only conveyed its intention to acquire the lands.

105. The learned Government Pleader sought to explain by contending that those entries were only temporary in nature and that in the event of the lands get excluded from the project, the entries would stand reverted back.

106. We do not agree with the said stand taken by the learned Government Pleader at that juncture itself. Now that we had allowed the writ petitions, all the entries in the revenue records, which stood mutated, shall be reversed in the names of the respective land owners and fresh orders be issued and communicated to the respective land owners within two weeks thereafter. This direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this judgment." (emphasis supplied)

16. The High Court in the impugned judgment also took note of other decisions34, presumably referred to by the parties during 34 State of U.P. & Ors. vs. Babu Ram Upadhya, AIR 1961 SC 751;

Col. A.S. Sangwan vs. Union of India & Ors., AIR 1981 SC 1545; Life Insurance Corporation of India vs. Escorts Ltd. & Ors., (1986) 1 SCC 264;

Dwarkadas Marfatia & Sons vs. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293;

State of Tamil Nadu & Anr. Vs. A. Mohammed Yousef & Ors., (1991) 4 SCC 224;

Ujjain Vikas Pradhikaran vs. Raj Kumar Johri & Ors., (1992) 1 SCC 328;

Jilubhai Nanbhai Khachar & Ors. vs. State of Gujarat & Anr., 1995 Supp (1) SCC 596;

argument before it. However, in the impugned judgment, no analysis thereof is found.

THE CHALLENGE

17. Aggrieved, three sets of appeals have been filed before this Court. First, by the NHAI, second by the Union of India and State of Tamil Nadu & Ors. vs. L. Krishnan & Ors., (1996) 1 SCC 250; Secretary, Ministry of Chemicals & Fertilizers, Government of India vs. Cipla Ltd. & Ors., (2003) 7 SCC 1;

Delhi Development Authority & Anr. Vs. Joint Action Committee, Allottee of SFS Flats & Ors., (2008) 2 SCC 672;

Sooraram Pratap Reddy & Ors. vs. District Collector, Ranga Reddy District & Ors., (2008) 9 SCC 552;

Bondu Ramaswamy & Ors. vs. Bangalore Development Authority & Ors., (2010) 7 SCC 129;

K.T. Plantation Pvt. Ltd. & Anr. Vs. State of Karnataka, (2011) 9 SCC 1;

Union of India vs. Kushala Shetty & Ors., (2011) 12 SCC 69;

Alaknanda Hydropower Company Limited vs. Anuj Joshi & Ors., (2014) 1 SCC 769;

Jal Mahal Resorts Private Ltd. vs. K.P. Sharma & Ors., (2014) 8 SCC 804; Rajendra Shankar Shukla & Ors. vs. State of Chhattisgarh & Ors., (2015) 10 SCC 400;

The Industrial Development and Investment Co. Pvt. Ltd. & Anr. Vs. State of Maharashtra & Ors., AIR 1989 Bom 156;

O. Fernandes vs. Tamil Nadu Pollution Control Board & Ors., (2005) 1 L.W. 13;

George Joseph and Ors. vs. Union of India, 2008 (2) KLJ 196;

New Kattalai Canal and Aerie Pasana Vivasayigal Welfare Association vs. Union of India & Ors., (2012) 1 MLJ 207;

Madan Malji Kambli & Ors. vs. State of Goa & Ors., 2012 SCCOnline Bom 694; and Prithvi Singh & Ors. vs. Union of India & Ors. – of the High Court of Punjab & Haryana at Chandigarh in CWP 689/2012, dated 16.5.2013. third, by the land owner(s) in reference to rejection of challenge to notifications under Section 2(2) of the 1956 Act. The grounds urged in the concerned appeals are more or less recapitulation of the points canvassed before the High Court and exhaustively dealt with in the impugned judgment. Besides the oral arguments, the concerned parties have filed written submissions as per the liberty given to them by this Court upon conclusion of the oral arguments through video conferencing (virtual Court hearing).

18. The arguments were opened by Mr. Tushar Mehta, learned Solicitor General of India. The gist of the points urged by him can be stated thus. Writ Petitions filed to assail the notifications under Section 3A of the 1956 Act including Section 2(2) were premature. In that, the question whether the acquisition is for public purpose is a matter to be dealt with by the appropriate authority in light of the objections filed by the aggrieved persons in response to the notifications under Section 3A(1) of the 1956 Act, which is merely an expression of intent to acquire the specified land for construction of national highway under the Project (Bharatmala Pariyojna – Phase I). He would contend that the High Court also committed manifest error in concluding that such notifications under Section 3A of the 1956 Act could be issued only after prior environmental and forest clearances/permissions are granted in that behalf. The High Court has misread and misapplied the decision of this Court in support of that view. It is urged that the

acquisition process initiated under the 1956 Act, which is a selfcontained code, is completely independent and cannot be fusioned with the formalities and procedure to be complied with before commencement of the Project construction work, in reference to the environment or forest laws. The appellants – NHAI and MoEF had unambiguously stated before the High Court and reiterate before this Court that all formalities will be complied with in its letter and spirit before the construction work of the stated national highway actually commences. It is essential to authoritatively decide as to at what stage the appellant – NHAI is required to obtain the environmental or forest clearance as per the extant laws including the notification and Office Memorandum dated 14.9.2006 and 7.10.2014, respectively, of the MoEF. The applicable notification/Office Memorandum explicitly excludes the need for a prior environmental clearance for "securing the land". It is urged that prior environmental clearances have been ordained before any construction work of specified project including for preparation of land by the project management (except for securing the land) is started on the project. Indeed, before commencement of such work or preparation, as the case may be, the concerned agency is obliged to make application in Form1. That may be possible only after identification of prospective site for the Project and/or activities to which the application relates. The identification of site for the construction of national highways becomes possible only upon completing the process of public hearing consequent to publication under Section 3A of the 1956 Act. It is then urged that the High Court justly rejected the argument of the land owners that open lands cannot be acquired for construction of national highways or that national highway can be declared only in reference to an existing highway. He submits that there is ample power bestowed in the appellant – NHAI and the Central Government in particular, in terms of the 1956 Act and the National Highway Authority of India Act, 198835 to acquire open land for the purposes of construction of national highway, as may 35 for short, "the 1988 Act" be declared under Section 2(2) of the 1956 Act. These legislations have been enacted well within the legislative competence of the Parliament being subject specified in List I of the Seventh Schedule. Similarly, the argument of notifications being in violation of constitutional provisions relating to executive powers is misplaced. On the other hand, the notifications issued under Section 2(2) of the 1956 Act and the follow up notifications issued under Section 3A of the same Act, proposing to acquire the subject lands, were fully compliant of the legal requirements. No violation of any nature can be attributed to the issuance of these notifications including that the same were not in good faith. He submits that the question whether the subject land referred to in the notifications under Section 3A(1) of the 1956 Act is required for public purpose or otherwise can be and ought to be answered in reference to the objections taken by the land owners/aggrieved persons during public hearing. The authority considering such objection can also consider the question about the viability and feasibility of the Project. He would contend that the land acquisition proceedings under the 1956 Act and grant of environmental clearance are two different and distinct processes. They operate in different fields. The High Court, therefore, completely misled itself in confusing the issue by holding that prior environmental and forest clearances ought to be obtained even before issuing notifications under Section 3A of the 1956 Act. The High Court also completely glossed over the mandate of Section 3D of the 1956 Act, predicating that the final declaration thereunder ought to be issued within one year from the date of publication of notifications under Section 3A, else the commenced process would be

deemed to have lapsed. The provisions such as Sections 3A to 3J of the 1956 Act, have been enacted by way of amendment Act of 1997 to ensure speedy conclusion of acquisition proceedings and prompt execution of highway projects. By interpretative process, the High Court has in fact, created an artificial barrier for issue of Section 3D notification and has rewritten the amended provisions of 1997. He would submit that the principle expounded by the American Courts have no bearing in the context of the express statutory scheme propounded under the 1956 Act and the 1988 Act or for that matter, under the environmental and forest laws including the notifications issued thereunder. The latter enactments (environmental/forest laws) would get triggered when the project work was to actually commence. In other words, execution of the Project could commence only after such clearances are in place. It is contended that the High Court proceeded to examine the need and viability of proposed CKS (NC) sector on erroneous basis and on assumptions. It proceeded to examine the comparative merits of different routes, which cannot be countenanced as it is beyond the scope of judicial review. As a matter of fact, the High Court has interfered with the policy decision of the competent authority (the MoRTH) dated 19.1.2018, completely overlooking the discretion bestowed in the Ministry vide Project (Bharatmala Pariyojna – Phase I) itself, empowering it to replace/substitute upto 15% length of 24,800 kms. of PhaseI of the Project by other suitable stretches/sections. The sector of CKS (NC) was finalized by the Committee in the meeting dated 19.1.2018 for the reasons recorded in the minutes, including the general principles governing development of national highways and also reckoned in the Project. It is contended that the High Court ought not to have interfered with the judicious and wellconsidered decision taken by the competent authority. He would contend that even if the section/project finalised vide minutes dated 19.1.2018 was not referred to in the original Project, however, as the decision was taken by the competent authority about the replacement/substitution to the extent permissible, it forms part of Phase I of Bharatmala Pariyojna (the Project) in place of the originally envisaged sector of CM (EC). The change was for the betterment of the area covered under the Project and would pay dividends in posterity at the micro levels in different ways of providing access and new opportunities and strengthening the national road network at the macro level. As regards the observation made in reference to the Consultant appointed for the subject Project, it is urged that the same was completely misplaced and in any case, extraneous for answering the challenge regarding validity of notifications under Section 3A(1) of the 1956 Act or for that matter, Section 2(2) of the same Act issued by the competent authority. As a matter of fact, no relief was claimed in the concerned writ petitions filed before the High Court against the Consultant nor its appointment order issued by the competent authority was under challenge. The Consultant was duly appointed for the stated Project to be paid on per kilometre basis, vide contract dated 22.2.2018. Indisputably, no financial loss will be caused to public exchequer as the Consultant fees is fixed on kilometre basis only. For, the subject stretch/section [CKS (NC)] involves only 277 kms. as against the stretch/section originally conceived [CM (EC)] of around 350 kms. Thus, it would entail in less consultant fees than was envisaged for the originally conceived section for the Project. In substance, it is urged that the High Court was persuaded to undertake a roving inquiry despite the official record indicating that necessary formalities and procedure has been complied with before declaration of CKS (NC) section as replacement/substitution of the

originally conceived section, and duly approved by the competent authority. The High Court should have dismissed the writ petitions. In support of his submissions, he has relied on the decisions of this Court in Akhil Bharat Goseva Sangh vs. State of A.P. & Ors. 36, Sooraram Pratap Reddy (supra), K.T. Plantation Pvt. Ltd. (supra), Kushala Shetty (supra) and Somawanti (supra); He has also invited our attention to decisions of Punjab & Haryana High Court in Diljit Singh & Ors. vs. Union of India & Ors.37 and of the Madras High Court in B. Nambirajan (supra) and Jayaraman (supra).

36 (2006) 4 SCC 162 37 2010 SCC Online P&H 11847

19. Mr. S. Nagamuthu, learned senior counsel appearing for the land owners/aggrieved persons, who had filed writ petitions before the High Court, urged that notifications under Section 3A(1) of the 1956 Act issued without obtaining prior environmental clearance from the MoEF in terms of the notification dated 14.9.2006 are void and bad in law. Moreover, as per the recommendation of the Environment Assessment Committee38, no environment clearance could be given to the subject section (Chennai-Salem) of the Project and in absence thereof, it must follow that no construction will be permissible on the specified lands and thus it cannot be used for the stated public purpose within the meaning of Section 3A(1) of the 1956 Act. On this count alone, no interference with the decision of the High Court in setting aside the notifications under Section 3A of the 1956 Act is necessary. According to him, the High Court has justly interpreted the sweep of notification dated 14.9.2006, which has a statutory force and mandates that prior clearance/permission ought to be taken before the commencement of acquisition process including issuing notifications under Section 3A(1) of the 1956 Act. In that, the 38 For short, "the EAC" satisfaction reached by the competent authority that the land referred to in such notification is required for public purpose, could be taken forward only upon grant of environmental/forest clearances. He has placed reliance on the exposition of this Court in Karnataka Industrial Areas Development Board (supra) and of the High Court of Judicature at Madras in M. Velu (supra), to buttress his submission. He then submits that the competent authority under the 1956 Act and the 1988 Act are different. Thus, the application for environmental clearance cannot be pursued by the competent authority under the 1956 Act, as in law, such application ought to be made by the competent authority under the 1988 Act before the commencement of the acquisition process. In other words, the competent authority under the 1956 Act cannot hasten issuance of notification under Section 3A(1) in anticipation. He submits that harmonious reading of the provisions of the 1956 Act and the 1988 Act go to show that the competent authority under the 1988 Act (NHAI) is expected to initiate the process by undertaking survey of the land and identifying the land under Section 16(2) of the 1988 Act; and then submit application for environment/forest clearance. Further, only after securing essential permission(s) therefor, the notification under Section 3A(1) of the 1956 Act could be issued by the Central Government to commence the acquisition process of such identified land. This course is not only desirable, but should be made compulsory by interpretative process in absence of any provision in the 1956 Act authorising the Central Government to return the unutilised land (due to refusal of essential clearances), to the erstwhile owner (unlike the provisions in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 39). He would submit that the

role of the MoRTH, the MoEF and the NHAI is well defined. In the alternative, it is submitted, that the authority under the 1956 Act may be permitted to continue with the acquisition process until the stage of notification under Section 3D(1) of the 1956 Act and to issue such notification only upon grant of permission/clearance by the competent authority under the environment and forest laws. This is because upon issuance of notification under Section 3D(1) of the 1956 Act, the land would vest absolutely in the Central Government free from all encumbrances. For that purpose, the expression "shall" 39 for short, the "the 2013 Act" occurring in Section 3D(1) of the 1956 Act be construed as "may" and by interpretative process, liberal meaning be ascribed to the proviso in Section 3D(3) of the 1956 Act. Such approach would preserve the interest of the land owners, as well as, effectuate the public purpose underlying the acquisition process.

20. Even Mr. Sanjay Parikh, learned senior counsel espousing the cause of the land owners and aggrieved persons would submit that the conclusion reached by the High Court in the impugned judgment that the acquisition process in question was vitiated because of the reasons noted in the judgment, needs no interference. He would submit that the subject section i.e. CKS (NC) was not part of the original Project (Bharatmala Pariyojna Phase I) and no tangible reason is forthcoming as to why such a change was approved by the competent authority, especially when the State Government was keen on developing the existing CM (EC) section as a priority project. He submits that the selection of CKS (NC) section is arbitrary and violative of guidelines/rules for selection of a national highway. Further, the stated section traverses through the greenfields and the agricultural lands including the forest area to the extent of 10 kms. Hence, the High Court was justified in concluding that the decision to change the section from CM (EC) to CKS (NC) was flawed and unsustainable. The selection of the said section was in violation of the original Project (Bharatmala Pariyojna – Phase I) itself, which was based on scientific survey and research envisaging development of CM (EC) section. The Project conceived after scientific process had the approval of CCEA and the authorities specified in 'Section E' of the original Project (Bharatmala Pariyojna) document. It mandates that CCEA approval is mandatory for projects involving expenditure of more than Rs.2,000 crores in respect of PublicPrivate Partnership and if it is an Engineering Procurement & Construction project – involving expenditure of more than Rs.1,000 crores. No such approval has been obtained in respect of the subject changed section/project, although it would involve expenditure upto Rs.10,000 crores. Moreover, the proposed change would be permissible only if the State was ready to bear at least 50% cost of the land acquisition. Even that condition is not fulfilled. Similarly, no survey of PCUs was undertaken in respect of the subject section unlike it was done in respect of the CM (EC) section. No justification is forthcoming as to why CM (EC) section has been completely shelved by the authorities concerned in terms of the minutes dated 19.1.2018. As per the prescribed norms in the Project, a new greenfield highway is to be constructed only when the PCUs of the existing road exceeds 50,000. In the present case, as per the detailed origin–destination studies, the combined PCUs of the three routes between ChennaiSalem do not meet the threshold of 50,000 PCUs. Despite that, the change recorded in the minutes dated 19.1.2018 predicates construction of highway through green fields and that too without prior environmental approvals therefor. It is clear from the record that the authorities were aware of the need to obtain CCEA approval when they changed the

scope of the Project from brownfield expansion to greenfield section between Chennai-Salem. The said change is in violation of the NHAI Works Manual, 200640. It is in breach of paragraph 1.8.1, which is to be followed uniformally by all units of the NHAI and can be modified only by the Chairman, after recording reasons. No modification in the application of the NHAI Manual in respect of the Project is done. Similarly, paragraph 2.7 thereof postulates that a package scheme such as the present one, 40 for short, "the NHAI Manual" should receive approval of the Central Government and individual projects will be approved after the DPR and cost estimates become available. Further, no fresh tender was issued by the NHAI for appointment of new Consultant despite the change of scope of the earlier Project. The Consultant, who was appointed for the CM (EC) section, was entrusted with the work of changed section i.e. CKS (NC). The issue regarding improper appointment of the Consultant has bearing on the challenge to the subject section of the Project being illegal. Reliance was placed on the decision of this Court in K. Lubna & Ors. vs. Beevi & Ors.41. It has been held therein that question of law can be raised at any stage, as long as factual foundation had been laid. This decision is pressed into service to support the finding and observations recorded by the High Court concerning the improper appointment of Consultant for the said section i.e. CK S (NC). His argument was focussed on the improper appointment of the Consultant for the subject section of CKS (NC) and supported the observations made by the High Court in the impugned judgment in that regard. To that end, reliance is 41 (2020) 2 SCC 524 placed on Shrilekha Vidyarthi & Ors. vs. State of U.P. & Ors.42. In substance, it is argued that the action of the competent authority is replete with undue haste and non application of mind besides being in violation of the standard operating procedures applicable to such Project including of not obtaining prior environmental/forest clearances before issuing notifications under Section 3A of the 1956 Act. Such clearances are necessary at the stage of appraisal under notification of 2006, as the Project pertains to greenfields and being a categoryA Project. The learned counsel elaborately took us through the procedure to be adopted by the Expert Appraisal Committee before according inprinciple approval for the project. He invited our attention to the MoEF Office Memorandum (O.M.) dated 7.10.2014 to buttress his argument that all environmental clearances are sitespecific and are required to be obtained beforehand. He would submit that only after such permission is granted, the acquisition process be commenced by issuing notification under Section 3A of the 1956 Act in respect of such lands for construction of national highway. Alternatively, he submits that the Court may also consider exempting/excluding 42 (1991) 1 SCC 212 the time taken in obtaining environmental clearance from the period of one year specified in Section 3D(3) of the 1956 Act. He has highlighted the points taken note of by the High Court in the impugned judgment and supported the conclusion reached by the High Court in setting aside notifications under Section 3A(1) of the 1956 Act. The learned counsel had relied upon the decisions of this Court in Karnataka Industrial Areas Development Board (supra) and State of Uttaranchal vs. Balwant Singh Chaufal & Ors.43. Similarly, of the Madras High Court in M. Velu (supra), of the Punjab & Haryana High Court in Diljit Singh (supra) and of the American Courts in Commonwealth of Massachusetts (supra), California (supra), Roosevelt Lathan and Pearline Lathan, his wife (supra), Arlington Coalition on Transportation (supra) and Jones (supra).

21. Mr. Nikhil Nayyar, learned senior counsel espousing the cause of land owners/aggrieved persons adopted the aforementioned arguments and also supported the conclusion reached by the High Court in the impugned judgment. Most of 43 (2010) 3 SCC 402 the points made during his oral submissions have been articulated by him in his written submissions. He submits that the impugned notifications under Section 3A as issued, have, in any case, lapsed by operation of law. On merits, he contends that the original Project including CM (EC) section, had received approval of the CCEA. However, the changed section i.e. CKS (NC) had no such prior approval of the CCEA. There is nothing in the Project document to authorise swapping of project/section, as done in the present case in the guise of discretion of 15%. He submits that reliance placed on the original approved project enabling exercise of discretion by the MinisterRTH is completely misplaced. That discretion cannot be invoked for provisioning a completely different project/section, as in this case between ChennaiSalem, and moreso when admittedly, three alternative routes are already available. He invited our attention to the specific grounds articulated in the writ petition(s) filed by the aggrieved persons before the High Court, pointing out gross defects and flaws in regard to the changed section. He would contend that the authorities cannot walk away with the argument of policy decision and the limited scope for intervention by the Courts in that regard. He invited our attention to Bengaluru Development Authority vs. Sudhakar Hegde & Ors. 44 to support the argument that notification under Section 3D of the 1956 Act can be issued after appraisal for grant of environmental clearance under the notification, 2006. He submits that this interpretation would be consistent with the scheme of the 1956 Act, as hearing of objection under Section 3C is a mandatory requirement and must precede the declaration under Section 3D. In the alternative, he submits that notification under Section 3D should not be issued until environmental and forest clearances are obtained in respect of the subject project. He submits that the decision in Diljit Singh (supra) does not enunciate the correct legal position. On the other hand, the requirement of law is that the environmental clearance must be obtained beforehand. He submits that the Punjab & Haryana High Court did not have the benefit of MoEF O.M. dated 7.10.2014, which makes the position amply clear about the stage of obtaining environmental clearance. He had relied on paragraph 100 of Karnataka Industrial Areas Development Board (supra) and also the High Court decision in M. Velu (supra). He also contended that the subject section of the Project has not been 44 2020 SCCOnline SC 328 sanctioned by the competent authority, as required in terms of the NHAI Manual. He submits that the change of section is without any tangible basis and is not supported by data required for justifying such change. The change is brought about contrary to the guidelines issued by the MoRTH. In substance, the argument is that the change has been effected hastily and without application of mind, as has been justly concluded by the High Court. He submits that no interference with the High Court decision is warranted.

22. The next in line to argue was Ms. Anita Shenoy, learned senior counsel. She espouses the cause of the land owners/aggrieved persons. She has supported the conclusion reached by the High Court and also adopted the submissions made by learned counsel preceding her. She has commended to us that environmental clearances must precede the commencement of acquisition process. That is because the EIA process involves steps such as details of alternative sites examined, status of clearances, details of forest land

and the physical changes to topography, land use, change in water bodies because of construction and operation of the project, etc. Public consultation also highlights the impact of the project on the people in the area and on the environment. Only on the basis of such empirical data, an informed decision can be taken for grant of environmental clearance. This process ought not to be viewed as any impediment in the project, such as construction of national highways, but as a tool for taking just and appropriate decision including to uphold the doctrines of "public trust", "precautionary principle" and "sustainable development". That is the requirement also under the notification of 2006 and MoEF O.M. dated 7.10.2014. Reliance has been placed by her on Hanuman Laxman Aroskar vs. Union of India45 to highlight the significance of notification, 2006. She has also placed reliance on the exposition in Kamal Nath (supra) to submit that the Courts are free to examine whether the project fulfils the requirements of good faith, for the public good and in public interest and does not encroach upon the natural resources and convert them into private ownership. According to her, notifications under Section 3A have been justly quashed at the threshold stage itself because of serious errors in the decision making process, which had vitiated the entire process and not 45 (2019) 15 SCC 401 merely because of lack of prior environmental clearance. She also highlighted the circumstances emanating from the record, which according to her, clearly go to show that the change of section was a hasty decision and not backed by any study/enquiries which ordinarily ought to precede such declaration. In that, the project stretches under the original Project (Bharatmala Pariyojna – Phase I) had been identified after a thorough and scientific exercise, carried out on the basis of detailed origindestination studies, freight flow projections and verification of the identified infrastructure gaps through geo mapping, using data from Bhaskaracharya Institute for Space Applications and Geo-Informatics (BISAG), as well as from other sources, and also integration of economic corridors with ongoing projects under the NHDP and infrastructure asymmetry in major corridors. For changing such a wellinformed decision, very strong evidence ought to have been produced by the authority deciding to change the same in the short span (i.e. 24.10.2017, when the Cabinet had approved the Phase I of the original Project consisting of section CM (EC); and the decision of MoRTH dated 19.1.2018 concerning CKS (NC) section). Not even DPR was placed before the MoRTH when such decision regarding change was taken on 19.1.2018. Further, approval accorded by the Cabinet/CCEA for the changed section of the Project, valued at more than Rs.500 crores was not forthcoming. In fact, the Central Government did not file any counter affidavit to justify why the change was adopted in the meeting dated 19.1.2018. It merely relied upon the counter affidavit of NHAI wherein it is asserted that it was a policy decision. The learned counsel also commented upon the manner in which the Consultant appointed for the earlier section of the Project was continued for the changed section without following necessary fresh tendering procedure. She then commented about the DPR submitted by the Consultant consisting of inaccurate and plagiarised contents. She submitted that good quality roads are essential for development of the area and all concerned, but there are already three existing highways between ChennaiSalem. Resultantly, the new section/project passing through the fertile agricultural land between ChennaiSalem was bound to impact the environment and also the livelihood of the land owners/farmers without any tangible advantage or gains accruing to them. Judicial review of such a decision was imperative and has been rightly struck down by the High Court.

23. The next learned counsel espousing the cause of land owner(s)/aggrieved person(s) is Mr. Kabilan Manoharan. He had appeared in the crossappeal filed to challenge the opinion of the High Court rejecting assail to the notifications issued under Section 2(2) of the 1956 Act, declaring NH179A and NH179B traversing through nonexistent roads and on open greenfield lands. He would contend that the High Court failed to comprehend the core aspects agitated by the writ petitioners. He has articulated the ground as follows: "….. That, the Petitioner had sought to Quash the 1 st Respondent MoRTH's Sec. 2(2) Declaration dated 0103 2018 under the National Highways Act, 1956 on the GROUND that it was issued without an enabling provision of law, as Sec. 2(2) of the National Highways Act, 1956 only enables an existing Highway to be declared as a National Highway and thus the G.O. was issued in "Arbitrariness" and in violation of Art. 14 of the Constitution and which is ultra vires the Constitution derived Legislative Powers of the Union (w.r.t. Roads under Entry 23 of the Union List in the VII Schedule under Art. 246 seen in contract with Entry 13 of the State List) and also ultra vires the Constitution derived Executive Powers of the Union (w.r.t. Roads under Art. 257)." And again: "(10) That, the Petitioner will now go on with submissions to demonstrate how the Policy Decision of the Respondents will be subject to Judicial Review given the evident facts that the Sec. 2(2) Declaration of new National Highway NH179B over Nonexistent road and on plain land, that which is a Decision/Declaration in furtherance of the Policy Decision to implement the ChennaiSalem Expressway Project, is in fact A. Issued in violation of Constitutional Provisions relating to Legislative Powers of the Union w.r.t. Roads as seen from Entry 23 of the Union List in the VII Schedule under Art. 246 seen in contracts with Entry 13 of the State List B. Issued in violation of Constitutional Provisions relating to Executive Powers of the Union w.r.t. Roads as seen from Art. 257 C. Issued in violation of Statutory Provisions (i.e. Sec. 2(2) of National Highways Act, 1956) D. Issued by the Delagatee (1st Respondent MoRTH) in an Act beyond the delegated powers (without all required PIB approval, PPPAC Approval, CCEA Clearance that was mandated) E. Issued in violation of a larger Policy (Bharatmala Pariyojna Phase – I; "BharatmalaI") F. Issued without any demonstrable Public Purpose as evident from the instances of Nonapplication of mind over available data on

(i) Characteristics of the project

(ii) Traffic Analysis

(iii) Study of Alternatives

(iv) Economic Analysis

(v) Financial Analysis

(vi) Sensitivity Analysis

(vii) Burden to Exchequer

(viii) Benefits to existing Tollway Concessionaires

(ix) Development tied to new Roads

(x) Carbon Footprint reduction from cheaper ways" These salient points have been elaborated in the written submissions drawn by Mr. Kabilan Manoharan, learned counsel assisted by Mr. P. Soma Sundaram, AdvocateonRecord. In his submission, this Court should be slow in interfering with the conclusion recorded by the High Court in reference to notifications under Section 3A of the 1956 Act. Learned counsel though has supported the conclusion reached by the High Court, yet assailed the adverse findings and conclusion in reference to the impugned notifications under Section 2(2) of the 1956 Act. According to him, the challenge to the stated notifications had been answered without reference to the points specifically raised by the writ petitioners. The same were only adverted to in paragraph 43 of the impugned judgment while dealing with point No. (ii). He would submit that the High Court ought to have set aside the notifications issued under Section 2(2) of the 1956 Act declaring new national highways, namely, NH179A and NH179 B, as they would traverse through nonexistent roads and on greenfield lands, being without authority of law. Therefore, the entire process was null and void. Learned counsel has relied upon the decisions of this Court in Col. A.S. Sangwan (supra), Dwarkadas Marfatia & Sons (supra), Synthetics and Chemicals Ltd. & Ors. vs. State of U.P. & Ors. 46 and Cipla Ltd. (supra).

24. Two more written submissions have been filed by the learned counsel espousing the cause of land owners/aggrieved 46 (1990) 1 SCC 109 (paragraph 54) persons, namely, by learned counsel Mr. T.V.S. Raghavendra Sreyas and Mr. S. Thananjayan. More or less, same points have been urged in their respective written submissions. Even according to them, considering the availability of three existing routes between ChennaiSalem and which have not achieved the maximum traffic, there was no need for a new project in the garb of connecting industries along the ChennaiSalem route. In that, there are no existing, approved or proposed industrial zones/SEZs along this route as per Government data. Further, the change recorded in the minutes of the meeting dated 19.1.2018 is not supported by any survey reports or documents containing empirical data to justify new national highway. The Consultant, who was appointed for the original Project concerning CM (EC) section, presented alignments for the changed section i.e. CKS (NC) in the meeting held on 19.2.2018 even though the intimation regarding change of scope of the Project was made known on 22.2.2018. As the decision was taken on the basis of the DPR prepared by the Consultant on the basis of incorrect facts mechanically copied from other reports and which was made the base document for consideration by the MoEF for issuance of Terms of Reference, the entire EIA process was vitiated. They have adopted the reasons and findings recorded by the High Court for quashing of the notifications under Section 3A(1) of the 1956 Act and pray for dismissal of the appeals preferred by the NHAI and the Union of India.

25. We have heard learned counsel for the parties and have also considered the relevant pleadings and documents including written submissions filed by the learned counsel appearing for the concerned parties.

LEGISLATIVE COMPETENCE OF THE UNION

26. The threshold issue, we propose to answer at the outset is about the legislative competence of the Parliament to enact a law for declaring open greenfield lands as national highway. Notably, no declaration was sought by the writ petitioners in reference to the provisions of the 1956 Act, the 1988 Act and in particular, Section 2 of the 1956 Act, to be ultra vires as such. The argument is that since only the State legislature is competent to make a law for construction of new roads traversing through the open green-fields, where no road exists and only in case of an existing road/highway, would the Central Government have power to declare it as a national highway. To buttress this submission, reliance is placed on Entry 13 of List II (State List) of the Seventh Schedule dealing with the subject on which the State legislature has exclusive power to make a law, namely: "13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles." In contradistinction, Entry 23 of List I of the Seventh Schedule in respect of which the Parliament has exclusive power to make law, is "highways declared by or under law made by Parliament to be national highways". It is, therefore, urged that the Central Government had no power to invoke Section 2(2) of the 1956 Act, as it merely enables the Central Government to declare an existing highway to be a national highway. Resultantly, the issue of impugned notifications by the Central Government under Section 2(2) of the 1956 Act declaring the section between CKS (NC), traversing through nonexistent road/highway and through open greenfields, is arbitrary exercise of power and violates Article 14 of the Constitution. It is, therefore, ultra vires the Constitution. It is also ultra vires the Constitution derived executive powers of the Union (w.r.t. "Roads" under Article 257).

27. As aforesaid, we shall first deal with the legislative power of the Union. Is it limited to making law in exercise of powers ascribable to Entry 23 of List I in respect of an existing highway to be declared as a national highway, as is contended before us? The legislative power of the Parliament can be traced to Article 246, which reads thus: "246. Subjectmatter of laws made by Parliament and by the Legislatures of States. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List"). (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List'). (4) Parliament has power to make laws with respect to any mater for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List." Indisputably, law made by the Parliament in the present case is the 1956 Act and the 1988 Act in reference to Entry 23 of List I of the Seventh Schedule. If the stated law made by the Parliament is ascribable to Entry 23 of List I of the Seventh Schedule, the Parliament has the exclusive power to make law on that subject and for matters connected therewith.

The fact that Entry 13 of List II bestows exclusive power upon the legislature of any State concerning subject "roads", cannot be the basis to give restricted meaning to Entry 23 in List I, dealing with all matters concerning "national highways". It is wellestablished position that if the law made by the Parliament is in respect of subject falling under Union List, then the incidental encroachment by the law under the State list, per se, would not render it invalid. The doctrine of pith and substance is wellestablished in India. The doctrine is invoked upon ascertaining the true character of the legislation. It may be useful to advert to Article 248 of the Constitution, bestowing legislative powers on the Parliament to make a law with respect to any matter not enumerated in the Concurrent List or the State List. Concededly, the expression "highways" as such, is not mentioned either in the State List or the Concurrent list. While making law on the subject falling under the Union List in terms of Entry 97 thereof, it is open to the Parliament to make law on any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists.

28. Indisputably, the entries in the legislative lists are not sources of legislative powers, but are merely topics or fields in respect of which concerned legislative body is free to make a law. The entries must receive a liberal and expansive construction, reckoning the wide spirit thereof and not in a narrow pedantic sense. Entry 23 in List I refers generally to "highways" declared or to be declared by the Parliament as national highways and all matters connected therewith. This empowers the Parliament to declare any stretch/section across any State as a highway for being designated as a national highway. There is no indication in the Constitution to limit the exercise of that power of the Parliament only in respect of an existing "highway". Further, whenever and wherever the question of legislative competence is raised, the test is whether the law enacted, examined as a whole, is substantially with respect to the particular topic of legislation falling under the concerned list. If the law made by the Parliament or the legislature of any State has a substantial and not merely a remote connection with the Entry under which it is made, there is nothing to preclude the concerned legislature to make law on all matters concerning the topic covered under the Union List or the State List, as the case may be. Reliance has been justly placed on the dictum of the Constitution Bench of this Court in K.T. Plantation Pvt. Ltd. (supra), that the test is identicalness or diversity between dominant intention of the two legislations. Moreover, power of lawmaking itself would be rendered otiose if it does not provide for suitable coverage of matters that are incidental as well as intrinsically connected to the expressly granted power. Further, Chapter II of Part XI of the Constitution dealing with administrative relations between the Union and the States makes it amply clear that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which applied in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Article 257 expounds about the control of the Union over States in certain cases. The same reads thus: "257. Control of the Union over States in certain cases. (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance.

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State." Clause (2) predicates that the executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national and military importance. The proviso makes it further clear that the power of the Parliament is not restricted in any way to the matters specified therein. The sevenJudge Constitution Bench in Synthetics and Chemicals Ltd. (supra) had observed that constitutional provisions specifically dealing with delimitation of powers in a federal polity must be understood in a broad commonsense point of view, as understood by common people for whom the Constitution is made.

29. Suffice it to observe that there is nothing in the Constitution which constricts the power of the Parliament to make a law for declaring any stretch/section within the State not being a road or an existing highway, to be a national highway. Whereas, the provisions in the Constitution unambiguously indicate that the legislative as well as executive power regarding all matters concerning and connected with a highway to be designated as a national highway, vests in the Parliament and the laws to be made by it in that regard. For the same reason, the complete executive power also vests within the Union.

30. The seminal question is whether the 1956 Act is a law ascribable to Entry 23 of the Union List and it provides for construction of a national highway on a nonexisting road/highway traversing through greenfield lands. It may be useful to advert to the Statement of Objects and Reasons for enacting the 1956 Act. The same reads thus:
"Statement of Objects and Reasons

1. Under an agreement entered into with the then existing Provinces, the Government of India provisionally accepted entire financial liability, with effect from the 1 st April, 1947, for the construction, development and maintenance of certain highways in the Provinces which were considered suitable for inclusion in a system of national highways. Upon the creation of the Part B States and the new Part C States under the Constitution, the National Highways scheme was extended to those States also.

2. Under entry 23 of the Union List. Parliament has exclusive power of legislation with respect to highways which are declared to be national highways by or under law made by Parliament. It is, therefore, proposed that the highways comprised in the Schedule annexed to this Bill should be declared to be national highways. Such a declaration would help the Central Government in exercising its powers with respect to the development and maintenance of these highways more effectively. Power is also sought to be vested in the Central Government to declare by notification other highways to be national highways. Power should also be given to the Central Government to enter into agreements with the State Governments or municipal authorities with respect to the development or maintenance of any portion of any national highway and fees may have to be levied in respect of certain types of services rendered on national highways.

3. The present Bill is designed to achieve the objects set forth above." (emphasis supplied) In the present case, we have to consider the sweep of the 1956 Act in light of the amended provisions, which came into force with effect from 24.1.1997. The 1956 Act extends to the whole of India and has come into force on 15.4.1957. Section 2(1) thereof is in the nature of declaration by the Parliament that each of the highways specified in the schedule appended to the 1956 Act to be a national highway. The Schedule appended in the end gives the description of such highways. SubSection (2) of Section 2, however, empowers the Central Government to declare "any other highway" to be a national highway by publishing a notification in the Official Gazette in that behalf and upon such publication, the highway shall be deemed to be specified in the stated Schedule. This provision contains a legal fiction.

31. This provision annunciates that the Parliament has entrusted the power in the Central Government or the Union to declare from time to time and when required, any other stretch/section in any State to be a national highway, which power could be exercised exclusively by the Parliament itself under the Constitution. SubSection (3) of Section 2 empowers the Central Government to omit any highway from the Schedule and upon such publication, it would cease to be a national highway. In other words, Section 2, as enacted by the Parliament, declared the highways referred to in the Schedule to be national highways and empowered the Central Government to add other highways to be a national highway and including omit the scheduled highways from time to time as per the evolving exigencies and administrative concerns. There is nothing in this Act to constrict the power of the Central Government to notify any stretch/section (not being an existing road/highway) within any State, to be a national highway.

32. A priori, the Central Government is free to construct/build a new national highway keeping in mind the obligations it has to discharge under Part IV of the Constitution for

securing a social order and promotion of welfare of the people in the concerned region, to provide them adequate means of livelihood, distribute material resources as best to subserve the common good, create new opportunities, so as to empower the people of that area including provisioning new economic opportunities in the area through which the national highway would pass and the country's economy as a whole. The availability of a highway in any part of the State paves way for sustainable development and for overall enhancement of human wellbeing including to facilitate the habitants thereat to enjoy a decent quality of life, creation of assets (due to natural increase in market value of their properties) and to fulfil their aspirations of good life by provisioning access to newer and presentday opportunities.

33. Sections 3A to 3J of the Act expound the procedure for acquisition of the land for the purpose of building a national highway. The same are set out hereunder: 3A. Power to acquire land, etc.—(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under subsection (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3B. Power to enter for survey, etc.—On the issue of a notification under subsection (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to—

(a) make any inspection, survey, measurement, valuation or enquiry;

(b) take levels;

(c) dig or bore into subsoil;

(d) set out boundaries and intended lines of work;

(e) mark such levels, boundaries and lines placing marks and cutting trenches; or

(f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

3C. Hearing of objections.—(1) Any person interested in the land may, within twentyone days from the date of publication of the notification under subsection (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that subsection.

(2) Every objection under subsection (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the

objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this subsection, "legal practitioner" has the same meaning as in clause (i) of sub section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub section (2) shall be final.

3D. Declaration of acquisition.—(1) Where no objection under subsection (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under subsection (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in subsection (1) of section 3A.

(2) On the publication of the declaration under subsection (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under subsection (1) of section 3A for its acquisition but no declaration under subsection (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under subsection (1) shall not be called in question in any court or by any other authority.

3E. Power to take possession.—(1) Where any land has vested in the Central Government under subsection (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under subsection (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice. (2) If any person refuses or fails to comply with any direction made under subsection (1), the competent authority shall apply—

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District, and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it. 3F. Right to enter into the land where land has vested in the Central Government.—Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. Determination of amount payable as compensation. —(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under subsection (1), for that land.

(3) Before proceeding to determine the amount under sub section (1) or subsection (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired. (4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in subsection (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under subsection (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or subsection (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount.—(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land. (2) As soon as may be after the amount has been deposited under subsection (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6)Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under subsection (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of subsections (2) to (4) shall apply to such deposit.

3I. Competent authority to have certain powers of civil court.—The competent authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.

3J. Land Acquisition Act 1 of 1894 not to apply.— Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act."

34. Section 3A of the 1956 Act inserted by way of an amendment in 1997, empowers the Central Government to declare its intention to acquire "any land". It need not be linked to an existing road or State highway. For, the expression "any land" ought to include open greenfields for construction or building of a national highway, consequent to declaration under Section 2(2) of the same Act in that regard. The central condition for exercise of such power by the Central Government is that it should be satisfied that such land is required for the public purpose of building a national highway or part thereof. Section 3B of the 1956 Act empowers the person authorised by the Central Government to enter upon the notified lands for the limited purpose of survey etc., to ascertain its suitability for acquisition for the stated purpose or otherwise. The final declaration of acquisition is then issued under Section 3D of the Act after providing opportunity to all persons interested in the notified land to submit their objections and participate in a public hearing under Section 3C. The contour of issues debated during this public hearing are in reference to matters relevant for recording satisfaction as to whether the notified land is or is not required for a public purpose for building, maintenance, management or operation of a national highway or part thereof. Be it noted that consequent to publication of declaration under Section 3D, the land referred to in the notification vests absolutely in the Central Government, free from all encumbrances. Possession of such land is then taken under Section 3E of the Act, upon depositing the compensation amount in the manner provided in Section 3H of the Act and as determined under Section 3G. Section 3F empowers the Central Government to enter upon the land after the same is vested in terms of Section 3D of the Act. Notably, Section 3J of the Act is a nonobstante provision and it predicates that nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under the 1956 Act. The national highways vest in the Union in terms of Section 4 of the 1956 Act and the responsibility for development and maintenance thereof is primarily that of the Central Government in terms of Section 5. The Central Government is competent to issue directions to the Government of any State in respect of matters specified in Section 6 of the Act. Section 9 empowers the Central Government to make rules in respect of matters provided therein for carrying out the purposes of the 1956 Act.

35. It is not necessary to dilate on the other provisions of the 1956 Act for the time being. As aforesaid, Sections 3A to 3J have been inserted by way of amendment of 1997. On close examination, the 1956 Act, as amended and applicable to the present case, is an Act to authorise Central Government to declare the notified stretches/sections in the State concerned as a highway to be a national highway; and for matters connected therewith including acquisition of "any land" for building or construction of a new highway (which

need not be an existing road/highway). The substance of this Act is ascribable to Entry 23 of the Union List and matters connected therewith.

36. Having said thus, we have no hesitation in concluding that the challenge to the notifications issued under Section 2(2) of the 1956 Act on the argument of lack of legislative competence, is devoid of merits. The High Court justly negatived the same and we uphold that conclusion.

EXECUTIVE POWERS OF THE UNION

37. A fortiori, even the challenge to the stated notifications on the ground of being ultra vires the Constitution derived executive powers of the Union, must fail. That challenge is founded on the purport of Article 257, which has been reproduced above. It is urged that Article 257 pointedly refers to the sphere of executive powers of the Union. Article 257 of the Constitution, as aforesaid, deals with administrative relations between the States and the Union. In the first place, having said that the Parliament has exclusive legislative competence to make a law in respect of national highways and all matters connected therewith, which includes declaring any stretch/section within the State (not being existing roads/highways) as a national highway, it must follow that the Central Government alone has the executive powers to construct/build a new national highway in any State and to issue directions to the Government of any State for carrying out the purposes of the 1956 Act. It is incomprehensible as to how the argument of lack of executive power of the Central Government despite such a law, can be countenanced. Concededly, the validity of Section 2 of the 1956 Act, which empowers the Central Government to notify any other highway (other than the scheduled national highways) as a national highway, has not been put in issue. No declaration is sought that the said provision is ultra vires the Constitution or the law. Therefore, the argument essentially requires us to examine the question as to whether Section 2(2) of the 1956 Act enables the Central Government to declare a national highway in respect of a non existing road(s)/highway(s) and on open greenfields land within the State. Suffice it to observe that the challenge to notifications issued by the Central Government under Section 2(2) of the 1956 Act on the ground of being ultra vires the Constitution derived executive powers, is also devoid of merits.

SCOPE OF SECTION 2(2)

38. We may revert to the argument that the Central Government, even if is competent to declare any stretch/section as a national highway, can do so only in respect of an existing road/highway within the State and not in respect of nonexistent road, much less traversing through the open greenfield lands. Somewhat similar question was dealt with by the same High Court (Madras High Court) in reference to the provisions of the Tamil Nadu Highways Act, 2001 in Jayaraman (supra). However, we are called upon to examine the question under consideration in reference to the 1956 Act and the 1988 Act. Hence, we proceed to examine Section 2 of the 1956 Act, which reads thus: "2. Declaration of certain highways to be national highways. (1) Each of the highways specified in the Schedule is hereby declared to be a national highway. (2) The Central Government may,

by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway." We have briefly adverted to the scope of subSection (1), which is in the nature of declaration by the Parliament that each of the highways specified in the Schedule appended to the 1956 Act shall be a national highway. For building a new highway, as in the present case, between stretch/section CKS (NC) NH179A and NH-179B respectively, the Central Government can do so in exercise of power conferred upon it under Section 2(2) of the 1956 Act. That empowers the Central Government to notify any other highway (not forming part of the Schedule appended to the Act) as a national highway and upon such publication of notification in the official gazette, the said highway is deemed to be specified in the Schedule as a national highway. This power is not constricted or circumscribed by any other inhibition, such as to declare only an existing road or highway within the State as a national highway. The requirement of a national highway within the country as a whole and Statewise, in particular, is to alleviate evolving socioeconomic dynamics, for which such a wide power has been bestowed upon the Central Government. The Central Government is obliged to do so to facilitate it to discharge its obligations under Part IV of the Constitution. There is nothing in the Constitution of India or for that matter, the 1956 Act to limit that power of the Central Government only in respect of existing roads/highways within the State. To say so would be counterproductive and would entail in a piquant situation that the Central Government cannot effectively discharge its obligations under Part IV of the Constitution unto the remote inaccessible parts of the country until the concerned State Government constructs a road/highway within the State. On the other hand, if the concerned State, due to reasons beyond its control or otherwise, is unable/flounder to provision a road/highway in a given segment of the State; despite being imperative to do so to assuage the perennial difficulties faced by the locals in that belt due to lack of access, the Central Government may come forward and step in to construct a national highway and connect the area with the other parts of the country. By its very nomenclature, a national highway is to link the entire country and provide access to all in every remote corner of the country for interaction and to promote commerce and trade, employment and education including health related services. This approach would enhance and further the federal structure. This is because, the existence of a national highway in the neighbourhood paves way for the fulfilment of aspirations of the locals and their empowerment. It not only brings with it opportunity to travel across, but also propels the economy of that region and the country as a whole. It gives impetus to myriads of social, commerce and more importantly, access to other activities/facilities essential for the health, education and general wellbeing of the locals, in particular.

39. The expression "highway" has not been defined in the 1956 Act or even in the 1988 Act. Dictionary meaning of the term "highway" as per Venkataramaiya's Law Lexicon (Second Edition) is as follows: "Highway. A highway is the physical track along which a vehicle travels. [See Kelani Valley Motor Transit Co. Ltd. v.

Colombo, etc. Ltd., A.I.R. 1946 P.C. 137. Public roads, which every subject of the kingdom has right to use. Wharton's Law Lexicon.] The common definition of highway which is given in all the textbooks of authority is that it is a way leading from one market town or inhabited place to another inhabited place, which is common to all the Queen's subjects (per Coleridge, C.J. Bailey v. Jamieson, 34 L.T. 62) but if the dedication to the public is clear, a thoroughfare is not essential to a highway, e.g. cul desac may be a highway. – Rugby Trustees v. Merryweathers, 103 E. R. 109.

The common definition of a "highway" is that it is a way leading from one marked town or inhabited place to another inhabited place, and which is common to all the subjects of the sovereign. Public bridges are highways so far as the right of passage is concerned. [Halsbury's Laws of England, Vol. 16, para. 1] A bridge is not the private property of an individual, but is the property of the State, and is a public bridge. – K.K. Wadhwani, Mrs. V. State of Rajasthan, I.L.R. (1967) Raj. 850 at p. 852 : A.I.R. 1958 Raj. 138.

The right of the public in a highway is merely to pass and repass. Such right can be restricted at the time of the dedication and whether the right is restricted or not is generally established by the nature of the user. The presumption generally is that the dedication is for the ordinary and reasonable user of the road as a highway. It is well settled that the question of the kind of traffic for which a highway is dedicated is a question of fact and it has to be answered having regard to the character of the way and the nature of the user. It is also settled that a right of passage once acquired will extend to "more modern forms of traffic reasonably similar to those for which the highway was originally dedicated, so long as they do not impose a substantially greater burden on the owner of the soil, nor substantially inconvenience persons exercising the right of passage in the manner originally contemplated".

The right of the public is a right to "pass along" a highway for the purpose of legitimate travel not to be on it except so far as their presence is attributable to a reasonable and proper user of the highway as such. A person who is found using the highway for other purposes must be presumed to have gone there for such purposes and not with a legitimate object and as against the owner of the soil he is to be treated as a trespasser – Moti Lal v. Uttar Pradesh Government, A.I.R. 1951 All. 257 at p.267.

In order to constitute a valid dedication to the public of a highway by the owner of the soil, it is clearly settled that there must be an intention to dedicate – there must be an animus dedicandi ; of which the user by the public is evidence, and no more ; and a single act of interruption by the owner is of much more right, upon a question of intention, than many acts of enjoyment.

There may be a dedication to the public for a limited purpose ; as for a bootway, house-way or driftway ; but there cannot be a dedication to a limited part of the public. Muhammad Rustam Ali Khan v. Municipal Committee of Karnal City, 38 M.L.J. 455 at p.460.

The normal use of the word "highway" includes "road", particularly when the reference is to places where "there is a public right of travel". – R. ex rel. Johnson v. Johansen, (1962) 38 W.W.R. 381, per manning, J. at p. 383; Words and Phrases Legally Defined, 2nd Ed., Vol. II, p. 360."

40. The meaning of expression "highway", as expounded in the P. Ramanatha Aiyar's Advanced Law Lexicon (6 th Edition) reads thus: "Highway. Means a National Highway declared as such under section 2 of the National Highways Act, 1956 and includes any Expressway or Express Highway vested in the Central Government, whether surfaced or unsurfaced, and also includes

(i) all lands appurtenant to the Highway, whether demarcated or not, acquired for the purpose of the Highway or transferred for such purpose by the State Government to the Central Government;

(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such Highway; and

(iii) all trees, railings, fences, posts, signs, signals, kilometre stone and other Highway accessories and materials on such Highways. [Control of National Highways and Land Traffic Act, 2002 (13 of 2003), section 2(e)]" The expression "national highway" has been defined in the same Law Lexicon as follows: "National Highway. National highway is invariably a metalled road and it could be a road within the meaning of section 2(6) of the Act if it is maintained by the State Government. Bhulli v. State, MLJ : QD (1961-1965) Vol V C1769 : 1964 All WR (HC) 512 : 1964 All Cr R 379 [U.P. Road Side Land Control Act (10 of 1965), section 2(6)] "NATIONAL HIGHWAYS" means the highways specified in the Schedule to the National Highways Act, 1956 or any other highway declared as national highway under sub section (2) of Section 2 of the said Act. [Motor Vehicles (Driving) Regulations, 2017, Regn.2(1)(i)]"

41. The Central Government, whilst exercising power under Section 2(2) of the 1956 Act creates a right in the locals of the concerned area to pass and repass along a highway from one marked town or inhabited place to another inhabited place for the purpose of legitimate travel. Such highway is dedicated for the ordinary and reasonable user of the road as a national highway from one designated town (Chennai) upto another town (Salem), which will be common to all the subjects. As expounded hitherto, the Central Government is fully competent to notify "any land" (not necessarily an existing road/highway) for acquisition, to construct a highway to be a national highway. MODIFICATION OF PROJECT AND EXTENT/SCOPE OF REVIEW

42. It was next contended that the decision to change the stretch/section to CKS (NC) was arbitrary and was not backed by scientific study. The original Project (Bharatmala Pariyojna Phase I) included section – CM (EC), as approved by the CCEA in October, 2017. It is true that the Project (Bharamala Pariyojna Phase I) was conceived after a scientific study as a comprehensive project at the macro (national) level for 24,800 kms. in Phase I, spanning over a period of 5 years (201718 to 202122) at an estimated outlay of

INR 5,35,000 crores with an objective to improve the efficiency of freight and passenger movement across the country by bridging critical infrastructure gaps through effective interventions like development of Economic Corridors, Inter Corridors and Feeder Routes (ICFR), National Corridor Efficiency Improvement, Border and International connectivity roads, Coastal and Port connectivity roads and Greenfield expressways. This Project, being a macro level project, does not reckon the nuanced imperatives of a particular region or area, which may only be a miniature of the whole Project traversing across around 24,800 kms. in Phase I. For that reason, the approved Project itself bestows discretion upon the MoRTH to substitute/replace up to 15% length of 24800 kms., of the Project (Phase I), by other suitable projects. It is so provided in clause III, which reads thus: "III. Minister RTH is authorized to substitute/replace up to 15% length of 24,800 kms for Phase I of the program by other suitable projects, if development of certain identified stretches under the program cannot be taken up on account of issues pertaining to alignment finalization, land availability and other unforeseen factors. MoRTH shall retain the same target and budget proposed above." It could thus be understood that alteration to the extent of 15% is permissible, if development of certain identified stretches under the program cannot be taken up on account of issues pertaining to alignment finalisation, land availability and other unforeseen factors and concerns relating to congestion, reduction of distance, operational efficiency are some of the factors which may attract such alteration, as we shall see. In the meeting convened on 19.1.2018, chaired by the Secretary, MoRTH for examining the micro level implementation of the comprehensive Project and keeping in mind the pressing requirements of the concerned State, the Committee opted for substitution/replacement of the original stretch/section [CM (EC)] for the reasons recorded in the minutes. It decided to change the section CM (EC) to CKS (NC) as regards State of Tamil Nadu. It was a wellconsidered decision taken by the said Committee set up under the aegis of the MoRTH. It must be assumed that the broadbased committee of experts in the field, was fully aware of the governing policies and criteria for designating national highways. It was also cognizant of the requirements and priorities of the concerned area and the norms specified for prioritising the stretches/sections. In that, national highways are regarded as arteries of the country's economy. That there is marked distinction and importance of being a National Corridor, in preference to the Economic Corridor which is for connection of economically important production and consumption centres (44 identified) under the Project (Bharatmala Pariyojna Phase I). Hence, it was unanimously resolved by the Committee to opt for National Corridor for the stretch/section ChennaiSalem inter alia because it would be the shortest route with very minimal logistical issues in completion thereof. That was also for efficiency improvement of existing Economic Corridor [CM (EC)] and for decongestion of corridor network with seamless connectivity with National corridor. Even the Project (Bharatmala Pariyojna Phase I) focuses on enhanced effectiveness of already built infrastructure, multimodal integration, bridging infrastructure gaps for seamless movement and integrating National and Economic Corridors. As per this project, the Golden Quadrilateral and NSEW Corridors carrying 35% of India's freight were to be declared National Corridors. The criteria for selection of corridors has been spelt out thereunder as follows: "I. Criteria for selection of corridors Selection criteria for projects to be taken up under Bharatmala PhaseI are to be

as follows: Sl. Component of Interse priority determination No. Bharatmala Pariyojana criteria for selection of stretches

1. Economic Corridor Economic corridor development Development program focuses on developing new corridors, in addition to existing Golden Quadrilateral (GQ) and North SouthEast West corridors (NSEW).

It is planned to develop these corridors end to end to ensure seamless and speedy travel and to ensure uniformity in standards in terms of speed, design of various elements of roads, control of accesses, way side amenities, road safety features, etc. Once upgraded it will ensure substantial increase in speed and time of travel for both freight and passenger traffic at large across the country.

Criteria:

- Stretches with higher freight flow;
- Stretches with overall higher traffic;
- Stretches with ease of Land Acquisition and pre-construction activities and DPR preparation;
- Capacity augmentation from 4 to 6 lane would be taken in 2 nd phase.

2. Inter Corridor and feeder development Stretches of roads connecting more than 2 corridors are classified as intercorridors routes, while other routes connecting to 1 or 2

corridors are termed as feeder routes.

Selection Criteria:

- Stretches with less than 4 lane infrastructure leading to infrastructure asymmetry on the corridor;
- Higher traffic in terms of PCU;
- Stretches with ease of Land Acquisition and pre construction activities and DPR preparation;

3. National Corridors Efficiency Improvement

National Corridor Improvement program will focus on improving the efficiency of the existing corridors (GQ and NS-EW), by removing the congestion points on the corridor to improve the average speed on the corridor. Interventions such as controlling

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| | | access on the corridor, uniform corridor tolling, development of bypasses, ring roads, fly overs at choke points will be taken up to improve the average speed on the existing corridors in line with the best in class corridors. |
| | Criteria:<br>• Congestion records;<br>• Road safety consideration<br>• Higher traffic would be prioritized;<br>• Focus on Ring roads;<br>• mobilization/acquisition of land by State Governments;<br>• Connectivity of Logistics Parks; | |
| 4. | Border and International Connectivity roads | Criteria:<br>Synergy with development of Integrated check post, Government priority;<br>IMT/BIN/BIMSTEC MVAs<br>Stretches of ease of Land Acquisition and preconstruction |

| | | |
|---|---|---|
| | | activities and DPR preparation |
| 5. | Coastal and Port connectivity roads | Criteria:<br>• Development status of Ports;<br>• Equity Participation by Stake holders;<br>• Synchronization with other port development under Sagarmala;<br>• Ease of Land Acquisition and preconstruction activities and DPR preparation; |
| 6. | Expressways | Criteria:<br>• Constraint in capacity augmentation of important NHs where PCU>50,000;<br>• Nigher traffic would be prioritized;<br>• Synchronization with rapidly growing Industrial Activities;<br>• Stretches with ease of Land Acquisition and pre-construction activities and DPR preparation. |

(emphasis supplied in italics)

43. Be that as it may, one of the reasons recorded in the minutes is that instead of opting for expansion of the existing stretch/section [CM (EC)], a crowflight greenfield alignment be preferred and developed between Chennai and Salem via Harur under National Corridor Efficiency Improvement, so as to reduce the distance between Chennai and Salem/Coimbatore by 40 kms. and also diversify the traffic from the congested Chennai Krishnagiri section of Golden Quadrilateral and Chennai Ulundurpet section of the CM (EC). At the outset, it had been noted that the traffic from Chennai bound to Salem/Coimbatore and Pallakad (Kerala) currently uses the ChennaiKrishnagiri section of the Golden Quadrilateral (ChennaiBengaluru) and the KrishnagiriSalem section of the NorthSouth corridor or the ChennaiTindivanamUlundurpet section of the CM (EC) and the UlunderpetSalem Intercorridor route, thereby congesting ChennaiKrishnagiri section of Golden Quadrilateral and ChennaiTindivanam (72,000 PCU) – Ulundurpet (47,000 PCU) section of the CM (EC). It is well settled that the findings of expert bodies in technical and scientific matters would not ordinarily be interfered with by the Courts – as observed in paragraphs 59 to 62 of Akhil Bharat Goseva Sangh (supra) (also see – K. Vasudevan Nair & Ors. vs. Union of India & Ors.47 and Systopic Laboratories (Pvt.) Ltd. vs. Dr. Prem Gupta & Ors.48). Again, in Kushala Shetty (supra), this Court analysed the provisions of the 1956 Act (Sections 3A to 3D) and opined that it is not open to the Court to castigate the reasons weighed with the competent authority. As we are dealing with this decision, we may note with approval dictum about the functions of the NHAI, as adverted to in paragraph 28 of the reported judgment. The same reads thus: "28. Here, it will be apposite to mention that NHAI is a pro fessionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and main tenance of national highways after thorough study by ex 47 1991 Supp (2) SCC 134 (paragraphs 19 and 20) 48 1994 Supp (1) SCC 160 perts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the par ticular alignment would subserve the larger public inter est. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been estab lished nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained." (emphasis supplied)

44. Thus understood, there is no substance in the argument that the change of stretch/section to CKS (National Corridor) was not based on any tangible material to sustain the stated decision of the Committee. Indeed, the necessity to enhance the existing section of Economic Corridor between ChennaiMadurai was taken note of in the principal Pariyojna. However, the Committee, as per the discretion bestowed in it in terms of the approved Pariyojna, whilst reckoning the imperatives of the region under consideration

for micro level implementation, took a conscious decision to opt for CKS (National Corridor) being relatively more beneficial and to strengthen the National Corridor; and at the same time increase efficiency of the existing economic corridor. Such decision, obviously, partakes the colour of a policy decision of the Central Government, which is also backed by the guidelines issued on 26.2.2018 by the competent authority of the same Ministry of the Government of India, MoRTH (Planning Zone). This communication refers to the approval of the Project (Bharatmal Pariyojna Phase I) by the CCEA in October, 2017 recording obstructions/difficulties faced during upgradation of the existing road arteries. After reckoning those issues, it is observed as follows: "Annexure – 1.1 No. NH15017/21/2018 – P&M Government of India Ministry of Road Transport & Highways (Planning Zone) Transport Bhawan, 1, Parliament Street, New Delhi – 110001 Dated: February 26, 2018 To,

1. The Chief Secretaries of all the State Government/ UTs

2. The Principal Secretaries/Secretaries of all States/UTs Public Works Department dealing with National Highways, other centrally sponsored schemes.

3. All EngineersinChief and Chief Engineers of Public Works Department of States/UTs dealing with National Highways, other centrally sponsored schemes.

4. The Chairman, National Highways Authority of India, G5 & 6, Sector10, Dwarka, New Delhi110075.

5. The Managing Director, NHIDCL, PTI Building, New Delhi110001

6. All CERos, Ros and ELOs of the Ministry

7. The Director General (Border Roads), Seema Sadak Bhawan, Ring Road, New Delhi-110010 Subject: Determination of Alignment/route for widening of National Highways – approach reg.

1. The Ministry of Road Transport & Highways has been undertaking development of National Highways across the country through its various project executing agencies, namely, the NHAI, NHIDCL, the State PWDs and the BRO. The programme for construction and development of National Highways acquired a new dimension with the construction of Golden Quadrilateral (GQ) and the North South and EastWest Corridors in the country. Though the National Highways account for only about 2% of the total road network of the country, it is primarily because of construction of national corridors that the NHs today carry and support movement of more than 40% of the road traffic.

2. With the exception of GQ and the NorthSouth and EastWest Corridors and a few more prominent greenfield Highways/Expressways, the Central Government has been generally taking up development of NH Projects through up gradation of the existing State Highways, major district roads and other roads, which, in other words, are known as the brownfield projects. The configuration of National Highways varies from – TwoLane

with paved shoulders (largely covering the NHs connecting interiors, backward & tribal areas, tourist destinations, and the roads constructed in the hill states of Northwest and Northeast), to up gradation from the existing 2lane roads to fourlane/six lane and eight-lane, depending upon traffic volumes between the origin, intervening and destination points.

3. Approval of the Bharatmala Pariyojana by the CCEA in October 2017, marks a major shift in approach, with focus on corridor approach, wherein it is planned to optimize the efficiency of existing National Corridors, develop Economic Corridors and new Expressways, take up roads for inter connectivity, apart from construction of ring roads/ bypasses around 28 major towns to remove the congestion and choke points. The ultimate intended objective is to construct major road corridors with improved geometry, which reduce travel time and costs, and help in faster movement of people and goods with attendant road safety parameters.

4. The lower categories of existing roads contain several inherent deficiencies especially in conformance to design standards, alignment/ geometry, land width etc. which at times also become road safety hazards and which are not addressed before declaration of these roads as National Highways. Upgradation of the existing road arteries to National Highways has been found to be suboptimal in many cases due to the following factors:

(i) Existing roads have been developed with greater focus on connecting the enroute towns and places, which is often seen to be compromising on the road geometry and leading to longer distance between the major origin destination points. A majority of these roads follow serpentine alignments as compared to crowflight alignments;

(ii) Expansion of an existing road necessarily involves: (a) acquisition of additional land for the required Right of Way (RoW), (b) shifting of utilities, and (c) felling of trees along the existing alignment. Further, as road arteries are considered to create huge value to the land abutting the road and the adjoining areas, the land situated along/ abutting any existing road artery (including a rural road) costs at least twice as much as the land under a greenfield alignment would do;

(iii) Serious constraints have been faced in acquisition of land for widening of an existing road especially in areas where habitations/commercial activities have come up over time, which necessitate demolition of existing structures in such inhabited areas, which often leads to compromise on the required uniform RoW and entail associated costs & time;

(iv) Removal/demolition of existing builtup structures along the required RoW makes it not only difficult but also far more expensive in terms of the associated costs. It becomes all the more challenging when it comes to removal of religious structures (e.g. temples, mosques churches etc. which are again found to be in existence in large numbers along the existing roads);

(v) Widening of existing roads further necessarily requires shifting of the utilities (electrical, water supply and other utilities) laid along the existing RoW, entailing considerable costs and time;

(vi) Further, in the same vein, widening of the existing roads require felling of trees, requiring forest related approvals and associated costs in terms of payment of NPV and felling charges apart from damage to the existing green cover and the time taken in completion of these processes.

5. As such, the determination of proper alignment of a NH project has become very critical. While selecting the route/alignment of the National Highways, various factors are to be considered such as the cost of land, cost of building/establishment, cost of shifting of utilities, construction cost of the road, cost of the safety features, transportation cost/road user cost, maintenance cost etc. In such a situation, there is every likelihood of achieving a better alternative in the form of a greenfield alignment, a few km away, to the left/right or north/south of the existing alignment. A few test cases have shown that most of these challenges are effectively met. If we take up construction of greenfield NH arteries, especially where the traffic volumes justify upgradation of a twolane road to higher configurations, which offer the following advantages:

(i) Typically, the available RoW in an existing 2lane road varies between 12 mtrs to 24 mtrs maximum. As per the NH norms for a 4/6/8 lane Highway, we require a minimum RoW of 60 mtrs. (the norm for an Expressway is 90 mtrs.). It has been found that it is eminently feasible to acquire a RoW of 60 to 70 mtrs for the greenfield in the same cost as involved in expansion of an existing road, especially when we take into account the associated costs and time taken in utility shifting, treefelling, additional compensation for demolition of structures coming in the expanded RoW;

(ii) A greenfield Highway with a RoW of 60 to 70 mtrs. would cater to the traffic flows and up gradation of such Highway up to 8lanes, along with service roads, wherever required (say, it gives a long term perspective of about next 30 to 40 years);

(iii) Offers the choice of a nearperfect (crow flight) road geometry, with reduced distance and savings on traveltime and fuel costs. The towns situated in close vicinity to such alignments can always be connected to the Highway with spurs:

(iv) The land acquisition is faster, with minimal resistance and costeffective;

(v) It opens up the potential for development of new areas and wealth creation for the less developed areas.

6. It has also been observed that in case National Highways are developed along the existing roads alignments, the problems of traffic hazards are not substantially resolved especially in the city/town area, which may lead to delays and congestion costs also. In case of greenfield alignment, it becomes feasible to avoid such delays and congestions. As such, in carrying out the costbenefit analysis of both the options, factors such as environmental and social impact may also be considered besides carrying out cost comparison towards delays and congestion removal.

7. Accordingly, the Consultants involved in preparation of DPRs for development of National Highways, especially where it is proposed to upgrade an existing twolane Highway to a higher configuration of 4/6/8 lane, and where Notification under Section 3D

of the NH Act, 1956 has not yet been issued, shall necessarily carry out a comparative costbenefit analysis while recommending the route/alignment of highway development along the existing alignment, with the alternate option of a greenfield alignment, which is a few kms away from the existing alignment. While carrying out the cost benefit analysis of both the options, the following factors shall be considered:

(i) Extant of land acquisition and the associated costs;

(ii) Number of structures required to be acquired along their extant and costs.

(iii) The quantum of utilities and costs required for their shifting.

(iv) The extent of treefelling and the associated cost & time for obtaining the requisite permissions.

8. Keeping the aforesaid in view, agencies executing the NH projects on behalf on MoRTH, are hereby advised to:

(i) Require their DPR consultants for each project (especially wherein it is envisaged to be upgraded to 4lane and above configurations and in respect of which Notification under Section 3D has not been issued), to examine the feasibility of development of a greenfield NH in each case;

(ii) While examining the feasibility of a green field alignment between the origin and destination points, it should, as far as possible, follow a crowflight route alignment with a little distance from the existing habitations/towns and identify the towns that need to be connected through spurs.

(iii) Clearly bring out in its report the advantages in terms of reduction in length/distance, geometric improvements and other advantages along with the costbenefit analysis so as to enable the competent authority to take considered decisions in this behalf.

9. Approach to development of NH along a Greenfield alignment:

In case the greenfield alignment option works out to be a preferred option, then –

(i) The entire RoW (60m70m) may be acquired for a maximum capacity of 8 lane main carriageway with provision for service roads. In case of Expressways, 90m RoW shall be acquired.

(ii) Initially 4lane carriageway with 4lane structures shall be developed with additional land left in the median for future expansion.

(iii) The highway shall have provision for service roads, preferably of 10 mtrs width, with maximum accesscontrol for the main carriage way.

(iv) Access to the towns/cities/establishments located on the existing National Highway, may be provided through spurs from the greenfiled route.

10. It has, therefore, been decided with the approval of competent authority that such analysis is to be made an integral part of the DPR preparation. Accordingly, the contents

of this circular may be incorporated in the TOR of the DPR consultancy. All the executive agencies are requested to adhere to these guidelines." (emphasis supplied)

45. There is no challenge to these guidelines. Indeed, these guidelines have been issued after the decision was already taken on 19.1.2018 in respect of section CKS (NC) in lieu of CM (EC) section. However, it needs to be understood that the decision was taken by the broadbased Committee of experts, of which the Secretary of the same Ministry (MoRTH) which had issued the guidelines on 26.2.2018, was the Chairperson alongwith the other officials including the officials of NHAI. The decision regarding change is a policy decision. Moreso, keeping in mind that the change in alignment and the purpose of such a change is stated to be for strengthening the national corridor in preference to the economic corridor in the region, it is not open to disregard this opinion of the Central Government based on the recommendation of the Committee constituted by it for that singular purpose.

46. This Court in Sooraram Pratap Reddy (supra) had held that it is the primary duty of the competent authority to decide whether there exists public purpose or not. The Courts may not ordinarily interfere with that unless the power is being exercised malafide or for collateral purposes or the decision is dehors the Act, irrational or otherwise unreasonable or socalled purpose is no public purpose at all and fraud of statute is manifest. Further, it is not for the Courts to sit over such decision as a Court(s) of appeal and to disregard it merely because another option would have been more beneficial. We may usefully advert to the dictum of the Constitution Bench of this Court in Somawanti (supra). In paragraph 36 (of SCCOnline), the Court observed thus: "36. Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legisla tive competence of the State the declaration of the Govern ment will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exer cised only where there is a public purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final." In the present case, it is seen that the basis for taking such informed decision by the Committee is ascribable to tangible aspects referred to in the minutes of the meeting held on 19.1.2018 (as is manifest from the factual aspects recorded therein). The decision of this Court in Dwarkadas Marfatia & Sons (supra) will be of no avail, because we find that the decision of the Committee was wellinformed and backed by reasons guided by public interest. We must remind ourselves of the word of caution noted by this Court in Col. A.S. Sangwan (supra) that the Courts should be loath in dealing with policy and administrative reasons. The Court observed thus: "4. …. A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the impera tives of national

considerations. We cannot, as court, give directives as to how the Defence Ministry should function except to state that the obligation not to act ar bitrarily and to treat employees equally is binding on the Union of India because it functions under the Constitu tion and not over it. … So, whatever policy is made should be done fairly and made known to those concerned. So, we make it clear that while the Central Government is beyond the forbiddance of the court from making or changing its pol icy in regard to the Directorate of Military Farms or in the choice or promotion of Brigadiers, it has to act fairly as every administrative act must be done." (emphasis supplied) We may usefully advert to yet another decision of this Court in Cipla Ltd. (supra), wherein the Court observed thus: "4.1. It is axiomatic that the contents of a policy docu ment cannot be read and interpreted as statutory provi sions. Too much of legalism cannot be imported in un derstanding the scope and meaning of the clauses con tained in policy formulations. At the same time, the Cen tral Government which combines the dual role of policy maker and the delegate of legislative power, cannot at its sweet will and pleasure give a goby to the policy guidelines evolved by itself in the matter of selection of drugs for price control. … It is nobody's case that for any good reasons, the policy or norms have been changed or have become impracticable of compliance. That being the case, the Government exercising its delegated legislative power should make a real and earnest attempt to apply the cri teria laid down by itself. The delegated legislation that fol lows the policy formulation should be broadly and substan tially in conformity with that policy, otherwise it would be vulnerable to attack on the ground of arbitrariness resulting in violation of Article 14.

4.2. In Indian Express Newspapers (Bom) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] the grounds on which subordinate legislation can be questioned were outlined by this Court. E.S. Venkataramiah, J. observed thus: (SCC p. 689, para 75) "75. A piece of subordinate legislation does not carry the same degree of immunity which is en joyed by a statute passed by a competent legisla ture. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. … It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reason able, but in the sense that it is manifestly arbi trary. In England, the Judges would say 'Parlia ment never intended authority to make such rules. They are unreasonable and ultra vires'." 4.3. True, the breach of policy decision by itself is not a ground to invalidate delegated legislation. … No doubt, in such matters, wide latitude is conceded to the legisla ture or its delegate. Broadly, the subordinate lawmaking authority is guided by the policy and objectives of the primary legislation disclosed by the preamble and other provisions. The delegated legislation need not be mod elled on a set pattern or prefixed guidelines. However, where the delegate goes a step further, draws up and an nounces a rational policy in keeping with the purposes of the enabling legislation and even lays down specific criteria to promote the policy, the criteria so evolved become the guide posts for its legislative action. In that sense, its freedom of classification will be regulated by the selfevolved criteria and there should be demonstrable justification for deviating therefrom. Though exactitude and meticulous conformance is not what is required, it is not open to the Government to go haywire and flout or debilitate the set norms either by giv ing distorted

meaning to them or by disregarding the very facts and factors which it professed to take into account in the interest of transparency and objectivity. …" (emphasis supplied)

47. Be it noted that the notifications under Section 2(2) to declare the CKS (NC) section as NH179A and NH179B, as the case may be, were issued only after due deliberation by the broadbased committee of experts, which decision we find is also in conformity with the guidelines contemporaneously issued by the concerned department on the same subject matter. Such a decision cannot be labelled as manifestly arbitrary, irrational or taken in undue haste as such. As a result, it was not open to the High Court to interfere with the change so articulated in the meeting held on 19.1.2018 or the notifications issued under Section 2(2) of the 1956 Act declaring CKS (NC) as a national highway (i.e. NH-179A and NH179B). The declaration of a highway being a national highway is within the exclusive domain of the Central Government in terms of Section 2(2) of the 1956 Act. The argument of the land owners that prior approvals ought to have been obtained from the CCEA and regarding budgetary arrangement, is premised on the manuals which govern the functioning of the executing agency (NHAI). As the decision regarding change of stretch/section has been taken by the concerned department of the Central Government itself and the approved Project (Bharatmala Pariyojna Phase I) also recognises that such change in the form of substitution/replacement of the stretch/section can be done by the Ministry upto 15% length of 24,800 kms., so long as it does not entail in incurring of additional costs, it becomes integral part of the originally approved project (for Phase I) for all purposes. In the present case, the costs for construction of CKS (NC) were bound to be less than the originally conceived CM (EC), as the length of the road is reduced significantly. In other words, it would operate as minor change to the original plan with deemed approval thereof and get interpolated therein. Further, the minutes recorded on 19.1.2018 do indicate that the decision was to be placed before the CCEA in the ensuing biannual meeting, where it would be duly ratified. Suffice it to observe that the decision taken by the Committee which culminated with the issuance of notification under Section 2(2) of the 1956 Act is in complete conformity with the governing provisions and guidelines and founded on tangible and objective facts noted in the minutes dated 19.1.2018. The Central Government had full authority to adopt such a change of stretch/section, by way of substitution/replacement whilst ensuring that there is no need for higher budgetary allocation than envisaged in the already approved programme for Phase I. Thus, there is no legal basis to doubt the validity of the notification under Section 2(2) and ex consequenti Section 3A of the 1956 Act as well.

48. The High Court has completely glossed over these crucial aspects and entered into the domain of sufficiency and adequacy of material including the appropriateness of the route approved by the competent authority. Such enquiry, in exercise of judicial review is forbidden. Furthermore, the High Court, despite noting that judicial interference in acquisition matters is limited, went on to interfere in the guise of extraordinary circumstances obtaining in this case. On a thorough perusal, the impugned judgment does not reveal any just circumstance for invoking the judicial review jurisdiction. In light of the above discussion, we hold that challenge to the decision of the Committee and ex consequenti of the Central Government, regarding change of section – CM (EC) to CKS (NC) at the micro level for the implementation of the original Project as approved, ought

not to have been doubted by the High Court. Notably, in the final conclusion and declaration issued by the High Court, it has justly not struck down the notifications under Section 2(2) of the 1956 Act. In other words, so long as Section 2(2) of the 1956 Act was to remain in force and the decision regarding change of stretch/section to CKS (NC) being the foundation for issue of notification under Section 3A, would continue to bind all concerned and in particular, the officials of NHAI being the executing agency.

PRIOR ENVIRONMENTAL/FOREST CLEARANCE: STAGE

49. That takes us to the next challenge premised on the argument that notification under Section 3A(1) of the 1956 Act could not have been issued without prior permission of the competent authority under the environmental/forest laws. This argument is based on the dictum of this Court in Karnataka Industrial Areas Development Board (supra). In paragraph 100 of the said decision, a general direction came to be issued that in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment. Paragraphs 100 and 101 of the reported decision are extracted hereunder: "100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions em anating from the principle of "Sustainable Development":

(1) We direct that, in future, before acquisi tion of lands for development, the conse quence and adverse impact of development on environment must be properly compre hended and the lands be acquired for devel opment that they do not gravely impair the ecology and environment.

(2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for develop ment. The said directory condition of allotment of lands be converted into a mandatory condi tion for all the projects to be sanctioned in fu ture.

101. This has been an interesting judicial pilgrimage for the last four decades. In our opinion, this is a significant contri bution of the judiciary in making serious endeavour to pre serve and protect ecology and environment, in consonance with the provisions of the Constitution." (emphasis supplied) Support is also drawn from the notification/Office Memorandum issued by the MoEF dated 14.9.2006 and 7.10.2014 respectively. Our attention is also invited to exposition in M. Velu (supra), following the aforementioned decision of this Court.

50. The question as to whether the competent authority under the 1956 Act is obliged to take prior permission before issuing notification under Section 3A of the Act, must be answered primarily on the basis of the scheme of the enactments under consideration. As regards power to acquire land for the purpose of building, maintenance, management and operation of a national highway or part thereof, the same has been bestowed on the Central Government in terms of Section 3A of the 1956 Act. There is nothing in the 1956

Act, which impels the Central Government to obtain prior environment clearance before exercise of that power and in issuing notification under Section 2(2), much less Section 3A expressing its intention to acquire the designated land.

51. The Central Government has framed rules in exercise of power under Section 9 of the 1956 Act, titled as the National Highways Rules, 195749. These rules are required to be followed by the executing agency. There is nothing, even in these Rules, to remotely suggest that the Central Government is obliged to obtain prior permission(s) under environmental/forest laws before issuing notification under Section 3A. The executing 49 For short "the 1957 Rules" agency is none else, but established under the 1988 Act, namely, the NHAI. Before NHAI commences the execution of any original work, it has to abide by the norms specified in the 1957 Rules regarding preparation of estimate of work etc. The Schedule of the 1957 Rules stipulates conditions for the issue of technical approval and financial sanction to plan and estimate for execution of any original work on a national highway costing an amount not exceeding Rs.50 lakhs by the executing agency concerned. Neither the 1956 Act, the Rules framed thereunder i.e. the 1957 Rules nor the 1988 Act and the Rules made thereunder have any bearing on the question under consideration. None of these enactments/rules specify any express condition requiring Central Government to obtain prior environmental/forest clearance before issuing notification under Section 2(2) declaring the stretch/section to be a national highway or Section 3A of the 1956 Act to express intention to acquire land for the purpose of building, maintenance, management or operation of a national highway, as the case may be.

52. Reverting to the notification issued by the MoEF dated 14.9.2006, even this notification does not constrict the power of Central Government to issue notification under Section 2(2) or Section 3A of the 1956 Act. There is nothing to suggest that before expressing intention to acquire any land for the purpose of the 1956 Act, prior environmental/forest clearance is required. The environmental/forest clearance, however, is, required to be obtained by the executing agency in terms of this notification "before commencing the actual work or executing the proposed work/project". That would happen only after the land is vested in the NHAI or the NHAI was to be entrusted with the development work of concerned national highway by the Central Government in exercise of powers under Section 5 of the 1956 Act read with Section 11 of the 1988 Act. The land would vest in the Central Government under the 1956 Act only after publication of declaration of acquisition under Section 3D. And until then, the question of Central Government vesting it in favour of NHAI under Section 11 of the 1988 Act would not arise. However, until the vesting of the land, the Central Government and its authorised officer can undertake surveys of the notified lands by entering upon it in terms of Section 3B of the Act. Pertinently, the activities predicated in Section 3B are of exploration for verifying the feasibility and viability of land for construction of a national highway. These are onetime activities and not in the nature of exploitation of the land for continuous commercial/industrial activities as such. There is remote possibility of irretrievable wide spread environmental impact due to carrying out activities referred to in Section 3B for assessing the worthiness of the land for using it as a national highway.

Thus, the question of applying notification of 2006 at this stage does not arise, much less obligate the Central Government to follow directives thereunder.

53. We may now revert to Section 4 of the 1956 Act. That provides for vesting of the national highway in the Union and after such vesting, the primary responsibility of developing and maintaining the national highway is that of the Central Government. In terms of Section 5, it is open to the Central Government to call upon the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government. Section 5 reads thus: "5. Responsibility for development and maintenance of national highways. – It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government." As per Section 6, the Central Government is competent to issue directions to the Government of any State for carrying out the provisions of the Act within the State.

54. It is indisputable that NHAI is an authority appointed by the Central Government under the 1988 Act. This authority is a functional body constituted under Section 3 of the 1988 Act. Chapter III of the 1988 Act provides for the manner of dealing with the contracts to be entered into by NHAI. Sections 11 to 13 deal with the power of the Central Government to vest in or entrust to the Authority (NHAI), transfer of assets and liabilities of the Central Government to the Authority (NHAI) and the compulsory acquisition of land for the Authority. The same read thus: "11. Power of the Central Government to vest or entrust any national highway in the Authority. —The Central Government may, from time to time, by notification in the Official Gazette, vest in, or entrust to, the Authority, such national highway or any stretch thereof as may be specified in such notification.

12. Transfer of assets and liabilities of the Central Government to the Authority. —(1) On and from the date of publication of the notification under section 11,—

(a) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with, or for, the Central Government, immediately before such date for or in connection with the purposes of any national highway or any stretch thereof vested in, or entrusted to, the Authority under that section, shall be deemed to have been incurred, entered into and engaged to be done by, with, or for, the Authority;

(b) all nonrecurring expenditure incurred by or for the Central Government for or in connection with the purposes of any national highway or any stretch thereof, so vested in, or entrusted to, the Authority, up to such date and declared to be capital expenditure by the Central Government shall, subject to such terms and conditions as may be prescribed, be treated as capital provided by the Central Government to the Authority;

(c) all sums of money due to the Central Government in relation to any national highway or any stretch thereof, so vested in, or entrusted to, the Authority immediately before such date shall be deemed to be due to the Authority;

(d) all suits and other legal proceedings instituted or which could have been instituted by or against the Central Government immediately before such date for any matter in relation to such national highway or any stretch thereof may be continued or instituted by or against the Authority. (2) If any dispute arises as to which of the assets, rights or liabilities of the Central Government have been transferred to the Authority, such dispute shall be decided by the Central Government.

13. Compulsory acquisition of land for the Authority. — Any land required by the Authority for discharging its functions under this Act shall be deemed to be land needed for a public purpose and such land may be acquired for the Authority under the provisions of the National Highways Act, 1956 (48 of 1956).

Chapter IV of the 1988 Act, in particular, Section 16 thereof, deals with the functions of the Authority (NHAI). The same reads thus: "16. Functions of the Authority. — (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. (2) Without prejudice to the generality of the provisions contained in subsection (1), the Authority may, for the discharge of its functions—

(a) survey, develop, maintain and manage highways vested in, or entrusted to, it;

(b) construct offices or workshops and establish and maintain hotels, motels, restaurants and rest rooms at or near the highways vested in, or entrusted to, it;

(c) construct residential buildings and townships for its employees;

(d) regulate and control the plying of vehicles on the highways vested in, or entrusted to, it for the proper management thereof;

(e) develop and provide consultancy and construction services in India and abroad and carry on research activities in relation to the development, maintenance and management of highways or any facilities thereat;

(f) provide such facilities and amenities for the users of the highways vested in, or entrusted to, it as are, in the opinion of the Authority, necessary for the smooth flow of traffic on such highways;

(g) form one or more companies under the Companies Act, 1956 (1 of 1956) to further the efficient discharge of the functions imposed on it by this Act;

(h) engage, or entrust any of its functions to, any person on such terms and conditions as may be prescribed;

(i) advise the Central Government on matters relating to highways;

(j) assist, on such terms and conditions as may be mutually agreed upon, any State Government in the formulation and implementation of schemes for highway development;

(k) collect fees on behalf of the Central Government for services or benefits rendered under section 7 of the National Highways Act, 1956 (48 of 1956), as amended from time to time, and such other fees on behalf of the State Governments on such terms and conditions as may be specified by such State Governments; and

(l) take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power or the discharge of any function conferred or imposed on it by this Act.

(3) Nothing contained in this section shall be construed as —

(a) authorising the disregard by the Authority of any law for the time being in force; or

(b) authorising any person to institute any proceeding in respect of a duty or liability to which the Authority or its officers or other employees would not otherwise be subject under this Act."

55. On plain and harmonious construction of the provisions of the two enactments (i.e. the 1956 Act and the 1988 Act), it is amply clear that at the stage of issuing notifications under Section 2(2) or for that matter, Section 3A of the Act, there is no need to seek prior permission (by the Central Government) under environmental laws or the forest laws, as the case may be. Further, the purpose of public hearing in the concerned enactments (namely, the 1956 and 1988 Acts on the one hand and the 1986 Act or forest laws, on the other) is qualitatively different and contextual to matters relevant under the concerned enactment. The competent authority in the former, may be satisfied that the acquisition of land in question is for public purpose, but if the competent authority under the latter legislations is of the view that the execution of the project in question (construction of a national highway) or any portion thereof may cause irretrievable comprehensive impact on the environment or the forests, as the case may be, would be competent to deny permission to such a project as a whole or part thereof. That decision must then prevail, being in public interests. This is not to say that one competent authority is superior to the other, but such balancing becomes essential to effectuate the public purposes under the stated enactments. It is quite possible that the executing agency (NHAI) may be able to convince the competent authority under the latter enactments that certain remedial steps can minimise or mitigate the environmental impact or to the forest, as the case may be, and commend it to accord conditional approval/permission to execute the project so as to conform to the tenets of sustainable development. If that suggestion commends to the

competent authority under the environmental/forest laws, such clearance/permission can be granted after the public hearing.

56. As regards the decision in Raghbir Singh Sehrawat (supra), the same may have relevance at the time of considering the objections to be dealt with by the competent authority under the 1956 Act during the public hearing under Section 3C. The dictum in this decision cannot be the basis to doubt the well considered decision dated 19.1.2018 nor the notification issued by the Central Government under Section 2(2) of the 1956 Act declaring the stretch between CKS (NC) as a national highway.

57. Even in the case of R.S. Nanji (supra), the Constitution Bench highlighted the sweep of expression "public purpose" in the context of challenge to the order of the competent authority to requisition the premises. As noted earlier, the satisfaction regarding public interests or necessity to acquire the land in question for public purpose for construction of a new national highway, is a matter which needs to be considered by the competent authority during the public hearing under Section 3C of the 1956 Act. The challenge before the High Court in the present case was before that stage had reached, for which reason we do not wish to dilate on this reported decision any further.

58. Suffice it to observe that the subject notification of 2006 and Office Memorandum dated 7.10.2014 ordain that such permission is required to be obtained (only) before commencement of the work of the new project or activities or on the expansion or improvisation of the project or activities based on their potential environment impact. The notification dated 14.9.2006 reads thus: "(Published in the Gazette of India, Extraordinary, Part II, and Section 3, Subsection (ii) MINISTRY OF ENVIRONMENT AND FORESTS New Delhi 14th September, 2006 Notification S.O. 1533 Whereas, a draft notification under subrule (3) of Rule 5 of the Environment (Protection) Rules, 1986 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India1, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18 th May, 2006 and the procedure specified in the notification, by the Central Government or the State or Union territory Level Environment Impact Assessment Authority (SEIAA), to be constituted by the Central Government in consultation with the State Government or the Union territory Administration concerned under subsection (3) of section 3 of the Environment (Protection) Act, 1986 for the purpose of this notification, was published in the Gazette of India ,Extraordinary, Part II, section 3, subsection (ii) vide number S.O. 1324 (E) dated the 15th September ,2005 inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public; And whereas, copies of the said notification were made available to the public on 15th September, 2005; And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;

Now, therefore, in exercise of the powers conferred by sub section (1) and clause (v) of subsection (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of subrule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under subsection (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

2. Requirements of prior Environmental Clearance (EC): The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product mix in an existing manufacturing unit included in Schedule beyond the specified range.

3. State Level Environment Impact Assessment Authority: …..

4. Categorization of projects and activities:

(i) All projects and activities are broadly categorized in to two categories Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.

(ii) All projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal

Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(iii) All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project;

5. Screening, Scoping and Appraisal Committees: The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and (SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEAC's shall meet at least once every month.

…..

6. Application for Prior Environmental Clearance (EC): An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form 1A, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the prefeasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form 1A, a copy of the conceptual plan shall be provided, instead of the pre feasibility report.

7. Stages in the Prior Environmental Clearance (EC) Process for New Projects: 7(i) The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are: • Stage (1) Screening (Only for Category 'B' projects and activities) • Stage (2) Scoping • Stage (3) Public Consultation • Stage (4) Appraisal I. Stage (1) Screening:

… II. Stage (2) Scoping:

…..

III. Stage (3) Public Consultation:

(i) "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project

or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category B1 projects or activities shall undertake Public Consultation, except the following:

(a) modernization of irrigation projects (item 1(c) (ii) of the Schedule).

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7 (f) of the Schedule) which do not involve any further acquisition of land.

(d) all Building /Construction projects/Area Development projects and Townships (item 8).

(e) all Category 'B2' projects and activities.

(f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(ii) The Public Consultation shall ordinarily have two components comprising of:

(a) a public hearing at the site or in its close proximity district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected persons;

(b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity.

(iii) the public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45(forty five) of a request to the effect from the applicant.

(iv) in case the State Pollution Control Board or the Union territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period, and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days,.

(v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned that owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned

local persons to be freely expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing.

(vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the Summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form , within seven days of the receipt of a written request for arranging the public hearing . Confidential information including nondisclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means.

(vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation.

IV. Stage (4) Appraisal:

(i) Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance. … …..

7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

…

8. Grant or Rejection of Prior Environmental Clearance (EC):

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal

Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

…..

9. Validity of Environmental Clearance (EC): …

10. Post Environmental Clearance Monitoring: …..

11. Transferability of Environmental Clearance (EC):

…

12. Operation of EIA Notification, 1994, till disposal of pending cases:

… [No. J11013/56/2004IAII (I)] (R.CHANDRAMOHAN) JOINT SECRETARY TO THE GOVERNMENT OF INDIA SCHEDULE (See paragraph 2 and 7) LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE Project or Category with threshold limit Conditions Activity if any A B (1) (2) (3) (4) (5) xxx xxx 7 Physical Infrastructure including Environmental Services xxx xxx 7(f) Highways i) New National i) New State General Highway; and High ways; condition and shall apply

ii) Expansion of National High ways ii) Expansion greater than 30 KM, of National / involving additional State right of way greater Highways than 20m involving greater than land acquisition and 30 km passing through more involving than one State additional right of way greater than 20m involving land acquisition.

Note: General Condition (GC):

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Ecosensitive areas, (iv) interState boundaries and international boundaries.

Specific Condition (SC):

If any Industrial Estate/Complex / Export processing Zones /Special Economic Zones/Biotech Parks / Leather Complex with homogeneous type of industries such as Items 4(d), 4(f), 5(e), 5(f), or those Industrial estates with pre – defined set of activities (not necessarily homogeneous, obtains prior environmental clearance, individual industries including proposed industrial housing within such estates /complexes will not be required to take prior environmental clearance, so long as the Terms and Conditions

for the industrial estate/complex are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the Terms and Conditions of prior environmental clearance, who may be held responsible for violation of the same throughout the life of the complex/estate)." (emphasis supplied in italics and underline)

59. The view that we have taken is reinforced from the opening part of this notification. It expounds that no project involving potential environmental impact "shall be undertaken" or "commenced" in any part of India without obtaining prior environmental clearance in the manner provided for. Same position obtains from the recitals of this notification, namely, prior environmental clearance is required "before" any construction work or preparation of land by the project management, except for securing the land, is started on the project or the activity. A priori, the decision in Delhi Development Authority (supra), does not take the matter any further in the present case. Therefore, no interference is warranted with the decision of the Committee regarding the change of stretch/section to be implemented during Phase I between CKS (NC); including the impugned notifications under Sections 2(2) and 3A of the 1956 Act.

60. Be it noted that the notification of 2006 is in the nature of guidelines/directives issued by the Central Government in exercise of its statutory powers. These directions need to be adhered by the executing agency (NHAI) whilst undertaking the work in furtherance of the approved project. To put it differently, it is incomprehensible that the stated 2006 notification obliges the Central Government to take prior permission even before the stage of "planning" and "finalisation of the project(s)" such as in terms of the minutes dated 19.1.2018 followed by notifications under Sections 2(2) and 3A of the 1956 Act, as the case may be.

61. Much emphasis was placed on expression "securing the land", to contend that expression of intent to acquire the land referred to in Section 3A of the 1956 Act does not come under the excepted category. We reject this plea. In our view, the activities required to be undertaken in furtherance of notification under Section 3A of the 1956 Act, referred to in Section 3B of the same Act are only to explore the feasibility and viability of the stretch/section to be used as a national highway and no further. These activities are outside the purview of notification of 2006.

62. The High Court had adverted to decisions of other jurisdictions, namely, of American Courts, to buttress the view that prior permission ought to be taken even before issuing notification under Section 3A of the 1956 Act. Considering the legislative scheme and upon giving proper meaning and perspective to the directives issued by the Central Government in the form of 2006 notification, we are of the considered opinion that the dictum in those decisions will be of no avail. For, we are of the view that it is not necessary for the Central Government or for that matter, NHAI, to apply for prior environmental/forest clearances or permissions, as the case may be, at the stage of planning or taking an inprinciple decision to formalize the Project of constructing a new national highway manifested in notification under Section 2(2), including until the stage of issuing notification under Section 3A of the 1956 Act.

63. If we accept the argument of the writ petitioners that the Central Government must follow comprehensive procedure under the environmental laws and forest laws articulating its final decision and to issue notification under Section 2(2) of the 1956 Act to declare any stretch/land not being a highway as a national highway, such approach would be counterproductive and the functioning of the departments responsible for timely execution of such projects would be completely paralysed and depend solely on the outcome of the processes under the environmental laws or forest laws, as the case may be. It cannot be overlooked that the role of the competent authority under the environmental law or forest law is limited to scrutiny of the formalized project brought before it prior to its implementation by the executing agency, to ascertain whether it may have any environmental impact and if so, to impose such conditions by way of remedial steps to minimise and mitigate the impact while keeping in mind the need to fulfil the State's obligation of sustainable development.

64. Be that as it may, one cannot be oblivious of the qualitative difference between a project necessitating acquisition of a large chunk of land at one place for continual commercial/industrial activities to be carried out thereon as opposed to acquisition of a small strip of land in the area for construction of a road/highway. The purpose of road/highway is merely to facilitate free passage through the same. It would have a floating population unlike in the case of a big project at one place occupying several square metres of land and engaging in continual commercial/industrial activities thereon. The environmental impact would be and ought to be measured in relative terms and at the local level and site specific. Whereas, the requirement for road/national highway would essentially be in larger national interest.

65. For the purpose of considering the question posed before us, suffice it to observe that the prior environmental clearance in terms of 2006 notification issued under Section 3 of the Environment (Protection) Act, 1986 Act read with Rule 5 of the Environment (Protection) Rules, 1986, is required to be taken before commencement of the "actual construction or building work" of the national highway by the executing agency (NHAI). That will happen only after the acquisition proceedings are taken to its logical end until the land finally vests in the NHAI or is entrusted to it by the Central Government for building/management of the national highway. This position is reinforced and explained in the Office Memorandum issued by the MoEF dated 7.10.2014, which reads thus:
"F.No.2276/2014IAIII Government of India Ministry of Environment, Forest and Climate Change Impact Assessment Division Indira Paryavaran Bhavan, Jor Bagh Road, Aliganj, New Delhi – 110 003 Dated the 7th October, 2014 OFFICE MEMORANDUM Subject: Status of land acquisition w.r.t. project site while considering the case for environment clearance under EIA Notification, 2006regarding

1. It has been brought to the notice of this Ministry that in absence of any guidelines, different EACs/SEACs adopt different criteria about the extent to which the land w.r.t. the project site should be acquired before the consideration of the case for environment clearance (EC). Some of the Ministers in the Government of India and some industrial associations have represented that full acquisition of land for the project site should not be insisted upon before consideration of the case for EC and instead initiation of land

acquisition process should be sufficient for the consideration of such cases. The argument being that land acquisition process can go on in parallel and that consideration of EC need not await full land acquisition.

2. The matter has been examined the in the Ministry. The EC granted for a project or activity under the EIA Notification, 2006, as amended, is site specific. While full acquisition of land may not be prerequisite for the consideration of the case for EC, there should be some credible document to show the status of land acquisition w.r.t. project site when the case is brought before the concerned EAC/SEAC for appraisal. It has been accordingly decided that the following documents relating to acquisition of land w.r.t. the project site and may be considered as adequate by EACs/SEACs at the time of appraisal of the case for EC:

(i) In case of land w.r.t. the project site is proposed to be acquired through Government Intervention, a copy of preliminary notification issued by the concerned State Government regarding acquisition of land as per the provision of Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(ii) In case the land is being acquired through private negotiations with the land owners, credible document showing the intent of the land owner to sell the land for the proposed project.

3. It may, however, be noted that the EC granted for a project on the basis of aforesaid documents shall become invalid in case the actual land for the project site turns out to be different from the land considered at the time of the appraisal of project and mentioned in the EC.

4. This issue with the approval of the competent authority." (emphasis supplied) Applying the tenet underlying this notification, it is amply clear that before the process of acquisition of land is ripe for declaration under Section 3D of the 1956 Act, it would be open to the executing agency (NHAI) to make an application to the competent authority for environmental clearance. That process can be commenced parallelly or alongside the acquisition process after a preliminary notification under Section 3A of the 1956 Act, for acquisition is issued.

66. As in this case, after notification under Section 3A of the 1956 Act came to be issued, NHAI must have, and in fact has, moved into action by making application to the competent authorities under the environmental laws, as well as, forest laws to accord necessary permissions.

67. Considering the provisions of the 1956 Act and the 1988 Act, NHAI can take over the work of development and maintenance of the concerned national highway only if the notified land is vested in it or when the same is entrusted to it by the Central Government. From the scheme of the enactments in question, as soon as notification under Section 3A is issued, it is open to the Central Government to issue direction/notification in exercise of power under Section 5 of the 1956 Act read with Section 11 of the 1988 Act

so as to entrust the development of the proposed national highway to NHAI. Upon such entrustment, NHAI assumes the role of an executing agency and only thenceforth can move into action to apply for requisite permissions/clearances under the environmental/forest laws including as provided in terms of notification/Office Memorandum dated 14.9.2006 and 7.10.2014 respectively.

68. It is not in dispute that environmental/forest clearance is always site specific and, therefore, until the site is identified for construction of national highways manifested vide Section 3A notification, the question of making any application for permission under the environmental/forest laws would not arise, as predicated in Office Memorandum dated 7.10.2014. The site is identified only in reference to the notification under Section 3A of the 1956 Act, giving description of the land which is proposed to be acquired for public purpose of building, maintenance, management or operation of the national highway or part thereof.

69. Considering the interplay of provisions empowering the Central Government coupled with the purport of the notification/Office Memorandum issued by the MoEF dated 14.9.2006 and 7.10.2014 respectively, it will be paradoxical to countenance the argument that the Central Government is obliged to seek prior approval/permission of the competent authorities under the environment/forest laws, as the case may be, even before issuing notification under Section 2(2) or for that matter, Section 3A of the 1956 Act.

RE: DEEMED LAPSING AND THE WAY FORWARD

70. Reverting to the dictum of this Court in Karnataka Industrial Areas Development Board (supra), it must be understood to mean that the declaration under Section 3D regarding acquisition of notified land, be made only after environmental/forest clearance qua the specific land is granted. To put it differently, the necessity of prior environmental/forest clearance would arise only if finally, the land in question (site specific) is to be notified under Section 3D, as being acquired for the purposes of building, maintenance, management or operation of the national highway or part thereof. Such interpretation would further the cause and objective of environment and forest laws, as also not impede the timeline specified for building, maintenance, management or operation of the national highway or part thereof, which undeniably is a public purpose and of national importance. This would also assuage the concerns of the land owners that even if eventually no environment permission or forest clearance is accorded, the land cannot be reverted to the original owner as it had de jure vested in the Central Government upon issue of notification under Section 3D of the 1956 Act and no power is bestowed on the Central Government under this Act to withdraw from acquisition.

71. We are conscious of the fact, as has been rightly argued by the appellants authorities, that it is essential to issue a declaration under Section 3D of the 1956 Act within a period of one year from the date of publication of the notification under Section 3A in respect of the notified land, failing which notification under Section 3A ceases to have any effect. It is possible that whilst pursuing the proposal for environmental/forest clearance after notification under Section 3A, some time may be lost, even though the process under the

1956 Act for acquisition of the land had become ripe for issue of declaration of acquisition under Section 3D. It is also true that time spent for obtaining environmental clearance or permission under the forest laws has not been explicitly excluded from the period of one year to be reckoned under Section 3D(3) of the Act. The extension of time or so to say suspension of time is only in respect of period during which the action of the proceedings to be taken in pursuance of notification under Section 3A(1) is stayed by an order of Court. In other words, there is no express provision in the 1956 Act, which excludes the time spent by the Central Government or the executing agency in obtaining prior environmental clearance or permission under forest laws, as the case may be. To get over this predicament, by an interpretative process and also by invoking plenary powers of this Court under Article 142 of the Constitution, we hold that the dictum in paragraph 100(1) of Karnataka Industrial Areas Development Board (supra), shall operate as a stay by an order of the Court for the purposes of Section 3D(3) in respect of all projects under the 1956 Act, in particular for excluding the time spent after issue of Section 3A notification, in obtaining the environmental clearance as well as for permissions under the forest laws. Only this approach would further the cause of environment and forest laws, as also, the need to adhere to the timeline specified under Section 3D(3) for speedy execution of the work of construction of national highway, which is also for a public purpose and of national importance. In other words, balancing of competing public interests/public purposes need to be kept in mind as being the only way forward for accomplishing the goal of sustainable development.

72. The argument of the writ petitioners that the expression "shall" occurring in Section 3D(1) be interpreted as "may", though attractive on the first blush, deserves to be rejected. If that interpretation is accepted, it would render the efficacy of Section 3D(3) of lapsing of the acquisition process otiose. It is a mandatory provision. Instead, we have acceded to the alternative argument to give expansive meaning to the proviso in Section 3D(3) of the 1956 Act by interpretative process, including by invoking plenary powers of this Court under Article 142 of the Constitution to hold that the dictum of this Court in Karnataka Industrial Areas Development Board (supra) be regarded as stay granted by the Court to all notifications issued under Section 3A of the 1956 Act until the grant or non-grant of permissions by the competent authorities under the environmental and forest laws, as the case may be, including until the stated permissions attain finality. In other words, time spent by the executing agency/Central Government in pursuing application before the concerned authorities for grant of permission/clearance under the stated laws need to be excluded because of stay by the Court of actions (limited to issue of notification under Section 3D), consequent to notification under Section 3A. Thus, the acquisition process set in motion upon issue of Section 3A notification can go on in parallel until the stage of publication of notification under Section 3D, which can be issued after grant of clearances/permissions by the competent authority under the environment/forest laws and attaining finality thereof.

73. In the present case, it is noticed that the NHAI being the executing agency, had soon submitted Terms of Reference to the MoEF after publication of notification under Section 2(2) of the 1956 Act dated 1.3.2018, declaring the section CKS (NC) as a national highway. That was submitted on 19.4.2018 and the approval in furtherance thereof was

granted by the MoEF on 8.6.2018, consequent to the recommendation made by the EAC on 7.5.2018. Indeed, the NHAI thereafter submitted amendment to the Terms of Reference on 5.7.2018 and 21.8.2018. The EAC after examining the amendment in Terms of Reference, submitted its recommendation on 30.8.2018. It is also matter of record and stated on affidavit by the EAC that no lapses have been committed by the NHAI in complying with necessary formalities. Similarly, NHAI had submitted application on 12.5.2018 to Conservator of Forests for grant of permissions under the forest laws in respect of lands forming part of the notification under Section 3A of the 1956 Act. That application was duly processed and the permission was granted by the competent authority under the forest laws on 8.6.2018. Concededly, these permissions/clearances have been issued by the concerned authorities under the environment and forest laws after notification under Section 3A and before issuance of declaration under Section 3D of the 1956 Act. In terms of this decision, therefore, the time spent for obtaining such clearances including till the pronouncement of this decision and until the stated permissions/clearances attain finality, whichever is later, as the matter had remained sub judice, need to be excluded. Even after excluding such period, if any notification under Section 3A impugned before the High Court is not saved from the deemed lapsing effect predicated in Section 3D(3), the Central Government may have to issue fresh notification(s) under Section 3A of the 1956 Act and recommence the process of acquisition, if so advised. We are not expressing any final opinion in that regard. However, such fresh notifications may be issued only in respect of land forming part of permissions/clearances given by the competent authority under the environment/forest laws, being site specific.

OTHER CONTENTIONS

74. That takes us to the grievance regarding the same Consultant being continued for the changed section i.e. CKS (NC). Indeed, the eligibility of the Consultant was in reference to the originally conceived project concerning CM (EC). It was found eligible to undertake the consultancy work for the said project and letter dated 29.9.2017 was also issued by NHAI. In the Committee's meeting chaired by the Secretary of MoRTH on 19.1.2018, new alignment was finalised thereby deviating from the original project of CM (EC). Instead, section CKS (NC) was finalised. However, the same Consultant had been continued by execution of a contract agreement dated 22.2.2018 for the changed stretch/section. This was done as the terms and conditions were same. Indeed, it was vehemently contended before us that the authorities should have followed the procedure stipulated for appointment of Consultant for the changed project afresh. However, we find that in none of the writ petitions filed before the High Court, express declaration had been sought or for that matter, the contract agreement dated 22.2.2018 executed between NHAI and the Consultant came to be challenged. Moreover, the terms and conditions of appointment of the Consultant would have no financial ramifications, considering the fact that the consultancy charges were to be paid on per kilometre basis; and in fact due to change of alignment, the length of proposed national highway stood reduced to only around 277 kms. (instead of original stretch [CM (EC)] of around 350 kms.) Further, no challenge is set forth regarding the qualification and eligibility of the Consultant as such. Notably, the decision to change the stretch/section from Economic Corridor to National

Corridor was that of the Committee. It was not founded on the recommendation of the Consultant, as has been assumed by the writ petitioners and so propounded before the high Court. The decision of the Committee was backed by tangible reasons as recorded in the minutes and also intrinsic in it its vast experience about the efficacy of governing policies for developing seamless national highway connectivity across the country. In any case, irregularity, if any, in the appointment of the Consultant cannot be the basis to quash and set aside a well considered decision taken by the Committee after due deliberations, much less the impugned notifications under Section 2(2) or Section 3A(1) of the 1956 Act. We therefore, hold that the High Court should have eschewed from expressing any opinion on the manner of appointment of the same Consultant for the changed section/stretch [CKS (NC)], as no relief challenging its appointment was sought and thus it was not the matter in issue before it; and for the same reason, we do not wish to dilate on this aspect any further. Thus understood, the dictum of this Court in decisions relied upon by the respondents/writ petitioners in K. Lubna (supra) and Shrilekha Vidyarthi (supra) will be of no avail in this case.

75. Having dealt with the merits of the controversy in extenso, it is unnecessary to dilate on the question of maintainability of the writ petitions being premature.

CONCLUSION

76. Before we conclude and for the completion of record, we may advert to the direction issued by the High Court in paragraph 106 of the impugned judgment as reproduced hitherto. The High Court directed the concerned revenue authorities to restore the mutation entries effected in favour of the acquiring body/NHAI merely on the basis of notification under Section 3A of the 1956 Act. By virtue of notification under Section 3A of the 1956 Act, neither the acquiring body nor the NHAI had come in possession of the concerned land nor the land had vested in them, so as to alter the mutation entry in their favour. To that extent, we agree with the High Court that until the acquisition process is completed and possession of land is taken, the question of altering the mutation entry merely on the basis of notification under Section 3A of the 1956 Act cannot be countenanced and, therefore, the earlier entries ought to be restored. That direction of the High Court needs no interference.

77. While parting, we must place on record that we have not expressed any opinion either way on the correctness and validity of the permissions/clearances accorded by the competent authorities under the environment and forest laws, as the case may be. For, those orders were not the subject matter or put in issue before the High Court. Therefore, it would be open to the affected persons to question the validity thereof on grounds, as may be permissible, before the appropriate forum. All contentions available to parties in that regard are left open.

78. We need to place on record that we have not dilated on other decisions adverted to and relied upon before us by the learned counsel appearing for the concerned parties, to avoid prolixity and also because the same have no bearing on the questions dealt with by us hitherto. In our opinion, appeals filed by the authorities ought to succeed merely on the

issues answered by us for dismissing the challenge to notifications under Section 2(2) and Section 3A of the 1956 Act, in the concerned writ petitions. Further, we do not wish to deal with the decisions relied upon, that the Project of this nature may have environmental impact and ought not to be taken forward. As aforesaid, we have not examined the efficacy of the permissions/clearances granted by the competent authority under the environment or forest laws, as the case may be. If those permissions/clearances are assailed, only then the decisions in Hanuman Laxman Aroskar (supra), M.C. Mehta (supra) and Bengaluru Development Authority (supra) may be looked at. Inasmuch as in those cases, the Court was called upon to examine the challenge in the context of permissions given by the competent authority under the environment laws.

79. Needless to observe that if any decision of the High Courts, which had been relied upon is not in consonance with the view taken by us, the same be treated as impliedly overruled in terms of this decision. We do not wish to multiply the authorities of the High Courts as commended to us on the issues answered in this judgment.

80. In view of the above, the appeals filed by the Union of India and NHAI (Civil Appeals arising out of SLP(C) Nos. 13384 85/2019, 1609816100/2019, 18577-18580/2019, 19160 19166/2019, 17751776/2020, 17771780/2020 and 1781 1783/2020) are partly allowed in the aforementioned terms; but the appeal filed by the land owner(s)/aggrieved party(ies) (Civil Appeal arising out of SLP(C) No. 18586/2019) stands dismissed. The impugned judgment and order is modified to the extent indicated in this judgment. The challenge to impugned notifications under Sections 2(2) and 3A of the 1956 Act, respectively, is negatived. The direction issued (in paragraph 106 of the impugned judgment) to the concerned authorities to restore the subject mutation entries is, however, upheld.

81. The Central Government and/or NHAI may proceed further in the matter in accordance with law for acquisition of notified lands for construction of a national highway for the proposed section/stretch CKS (NC), being NH Nos. 179A and 179B.

82. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

83. We place on record our appreciation for the able assistance given by the learned counsel for the parties and for being brief in their presentations despite the complexity of the issues and bulky record due to batch of cases being heard together including the daunting task of interacting through video conferencing (virtual Court) due to ongoing pandemic.

....., J.

(A.M. Khanwilkar) …....., J.

(B.R. Gavai) ....., J.

(Krishna Murari) New Delhi;

December 08, 2020.