

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18..12..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.11004 of 2018 & W.M.P.No.12909 of 2018
and
Writ Petition No.23449 of 2018 & W.M.P.No. 27363 of 2018

W.P.No.23449 of 2018:

The Tamil Evangelical, Lutheran Church,
Royapuam Pastorate,
Rep. by its Pastorate Committee Chairman,
Rev. V.Davis Jeyakar,
S/o.P.Viswasam, H2/225, Happy Nest,
Near Archana Mahal,
Paruthipattu,
Avadi, Chennai 600071.

... Petitioner

-Versus-

- 1.The Government of Tamil Nadu,
Rep. by its Secretary Transport Department,
Fort St. George, Chennai 600009.
- 2.The Land Acquisition Officer and
Revenue Divisional Officer,
Chennai North Division-Tondiarpet,
Chennai 600081.
- 3.The Metropolitan Transport Project (Railways) Chennai,
Rep. by its Chief Administrative Officer
Electrical (Construction),
No.183, E.V.R. Periyar High Road,
Chennai 600008.
- 4.The Assistant Executive Engineer,
Metropolitan Transport Project (Railways),
Mylapore, Chennai 600004.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the notice dated 30.01.2018 issued by the 2nd respondent in Form-A and the consequential

order dated 21.03.2018 issued by the 2nd respondent in his proceedings in Na.Ka.No.A-2451/2017 followed by the order issued by the 1st respondent in G.O.Ms.No.234, Transport (1-1) dated 30.07.2018 published at Page No.2 of Part-II, Section 2 of the Tamil Nadu Government Gazette Extraordinary No.272 dated 30.07.2018 and the final Form-E Notice affixed by the 2nd respondent dated 24.08.2018 in the Church premises and to quash the same and for a consequential direction the respondents 1 to 4 to put up 3rd and 4th Railway Line by erection of Over-Head Heavy Electrical Equipment (OHE) Post in the alignment of the existing Railway Compound Wall.

W.P.No.11004 of 2018:

The Tamil Evangelical, Lutheran Church,
Royapuram Pastorate,
Rep. by its Pastorate Committee Chairman,
Rev. U Paul Sezhiyan, Bethany Garden,
16/17, Cemetery Road,
Old Washermenpet, Chennai 600021.

.... Petitioner

-Versus-

- 1.The Government of Tamil Nadu,
Rep. by its Secretary Industries and Commerce Department,
Fort St. George, Chennai 600009.
- 2.The Revenue Divisional Officer (Land Acquisition),
Tondiyarpur Division (Kottam),
Chennai 600081.
- 3.The Metropolitan Transport Project (Railways),
Rep. by its Chief Engineer,
Thirumailai Station Building,
Mylapore, Chennai 600004.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the notice dated 30.01.2018 issued by the 2nd respondent in Form-A and the consequential order issued by the 2nd respondent dated 21.03.2018 in Na.Ka.No.A-2451/2017 and to quash the same and for a consequential direction to the respondents 1 to 3 to put up the 3rd and 4th Railway Line by erection of three number of Over-Head Equipment Post in the alignment of the existing Railway Compound Wall.

For Petitioner(s) : Mr.S.P.Ebenezer Paul
for Petitioner in both
WPs

For Respondent(s) : Mr.D.Raja, Addl.
Government Pleader for
R1 and R2 in both WPs
Mr.P.T.Ramkumar for R3
in both WPs

COMMON ORDER

(i) The writ petition in W.P.No.11004 of 2018 has been filed mainly challenging the notification dated 30.01.2018 issued under Section 3(2) of The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (in short, "the Act"] by the 2nd respondent; and

(ii) The writ petition in W.P.No.23449 of 2018 has been filed challenging the notification dated 30.07.2018 issued under Section 3(1) of The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997.

2. The case of the petitioner church, in brief, is as follows:- The petitioner church is a registered society with Registration No.2 of 1919 and the petitioner church was constructed way back in the year 1982. The Church is situated at Royapuram Tondiyarpuram Village in 7.5 grounds of lands comprised in Survey Nos.1751/1 and 1751/2 and more than 200 families are regularly attending the church for worship. On 27.01.2018, the 3rd respondent issued a communication to the petitioner stating that the Ministry of Railways had sanctioned the work of laying of 3rd and 4th Railway Lines between Chennai Beach and Korukkupet Stations and for laying the Railway track from Stanley Subway up to Washermenpet station the land with a width of five meters is required and the land Acquisition is under process and pending that process, the Mass Rapid Transport (MRT) may be permitted to erect three numbers of Overhead Equipment Post in the alignment of the existing railway compound wall and the compound wall will be dismantled and reconstructed after the erection of posts by railway itself. Earlier, it was stated by the 3rd respondent that the OHE Masts would be erected without affecting the church. While so, on 30.01.2018, the 2nd respondent had issued a notice under Section 3(2) of The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 [in sort, "the Act"], calling upon the petitioner to submit objection, if any, for acquiring the land in R.S.No.1751/1 measuring an extent of 155 square meter and R.S.No.1752/2 measuring an extent of 351.5 square meter for laying 3rd and 4th MRT Railway Lines. Accordingly, the petitioner church had

submitted its objection on 06.03.2018 by registered post, which was received by the 2nd respondent on 07.03.2018. In its objection, the petitioner church had stated that the proposed acquisition would cause a great inconvenience to the church and the 10 feet vacant land situated between the compound wall of railways and the main church building is being used as pathway to the church by the worshipers, visitors of the community hall. The above objection was forwarded by the 2nd respondent to the 3rd respondent, who in turn, on 21.03.2018 opined not to entertain the objection and the same was communicated to the petitioner on 21.03.2018. Thereafter, the petitioner had approached this court by way of writ petition in W.P.No.11679 of 2017 challenging the notice issued under Section 3(2) of the Act and in the said writ petition, this court while ordering notice to the 2nd respondents, directed the respondent to file their counter affidavits. Pending the above said writ petition, a notification under Section 3(1) of the Act came to be issued and the same was subsequently gazetted in G.O.Ms.No.272 dated 30.07.2018 Part-II, Section 2. It is this notification which is now under challenge in W.P.No.23449 of 2018.

3. The 2nd respondent filed his counter affidavit wherein it has been inter alia contended that the land was acquired for laying 3rd and 4th railway lines. The Deputy Chief Engineer, Metropolitan Transport Project (Railways), Chennai had furnished the land plan schedule together with a sketch showing the survey numbers and extent of land required for construction of New Broad Gauge Railway Track for 3rd and 4th lines between Chennai Beach and Korukkupet via., Royapuram and Washermenpet by his letter dated 28.11.2013. the draft plan was sent for administrative sanction from the Government. After the notice under Section 3(2) of the Act has been issued, it was found that the lands belonging to the petitioner church were comprised in S.Nos.1751/1 and 1751/2 but, in the notice issued under Section 3(2) of the Act, instead of mentioning as S.No.1752/2, however, subsequently, an erata has been issued on 03.06.2018 itself mentioning the correct survey number of the land belonging to the petitioner church. In the notice issued under Section 3(2) of the Act, as prescribed in Form-A was served on the petitioner in person by the Revenue Inspector-II, Tondiarpet Taluk, Chennai, on 30.01.2018 requiring the petitioner church to offer its explanation within 30 days. Thereafter, a notice in Form-B was published in Two Daily News Papers namely, Malai Murasu and Deccan Chronicle on 03.02.2018, wherein it has been clearly stated that any objection regarding the above proposed acquisition is received within the due date, an enquiry will be conducted on 06.03.2018. However, the objection from the petitioner church was received by the 2nd respondent only on 07.03.2018 which was beyond the time prescribed under the notice and as such no enquiry was conducted in the case of the

petitioner. Thereafter, final notice under Section 3(1) of the Act was issued.

4. The 2nd respondent filed his additional counter affidavit giving particulars of the publication of notice in Form-B in the locality. He further contended that the notice in Form-B was published in the locality on 30.01.2018 at the Office of the Zone-V corporation of Chennai and it was also published in Two daily newspapers on 03.02.2018. According to the 2nd respondent, copy of the notice as prescribed in Form-B have been affixed in the Offices of the District Collector, Chennai and the Tahsildar , Tondiarpet Taluk on 30.01.2018. Since the written objection from the petitioner church was received beyond the date fixed for enquiry, no enquiry was conducted.

5. On behalf of the requisitioning body, the 4th respondent has filed his counter affidavit wherein it is inter alia contended that the lands of the petitioner were required for laying 3rd and 4th railway lines between Chennai Beach and Athipattu section and the work was commenced in the year 2008 and is still in progress. Out of total 22 kms, the work of laying of 3rd line between Korukkupet and Athipattu Railway section has been completed for 18 kms and operation of trains in the 3rd line has already been commenced. Insofar as laying of 4th line, 16.5 kms of work has been completed in between Korukkupet and Athipattu Railway Section. The land belonging to the petitioner church which were sought to be acquired were situated at Washermenpet in between Chennai Beach and Korukkupet section. Since the church is 135 years old heritage building and being used as a place of worship, it was proposed to acquire only 2.75 meters in width, whereas in other places like Port Trust premises, acquisition has been done upto 12 meters by demolishing the buildings. A portion of land measuring to an extent 506.5 square meters of land belonging to the petitioner church was essentially required for the purpose of railway project to lay 3rd and 4th line which is necessary for operating more number of trains in between Chennai Beach and Athipattu section. Only after having considered the heritage value of the church building, the land plan schedule was prepared and steps were taken in such a way to acquire only a minimum extent of 506.50 square meters out of the vacant land available in the church premises without causing any obstruction to the main church building. The laying of 4th line will not cause any hindrance to the main building of the church and there is considerable space available in between the railway land and the church premises which would be sufficient for safe movement of trains. The land which were sought to be acquired would be utilized laying signal cables, signaling huts, electrical cables, telecommunication cables and switch boxes which are primarily required for effective functioning of signal systems.

6. The petitioner filed his reply affidavit to the additional counter affidavit stating that the one of the survey numbers of the land which were proposed to be acquired had been wrongly mentioned in the 3(2) notification and after having issued an erratum, no fresh notice has been issued to the petitioner and as such, the entire acquisition proceedings, insofar as the petitioner is concerned, is vitiated.

7. Mr.S.P.Ebenezer Paul, the learned counsel for the petitioner would submit that the very issuance of notice under Section 3(2) of the Act was defective as one of the survey number of the lands in question had been wrongly mentioned in the notice. Even though an errata had been issued, no fresh notice was issued to the petitioner thereafter. The learned counsel further contended that even though objection of the petitioner was forwarded by the 2nd respondent to the 3rd respondent and remarks were called upon, no enquiry was conducted as contemplated under Section 3(2) of the Act. According to the learned counsel for the petitioner, even though there is a delay in submitting the objection, as projected by the respondent, the delay was because of the fact that the administration of the church had been taken over by the Administrator and the objection was filed after getting permission from the Administration and as such, the delay cannot be put against the petitioner. The learned counsel for the petitioner further submitted that the church is in existence for more than 135 years and the same was constructed way back 1892 and the proposed acquisition of land seriously would seriously affect the affairs of the church and the right of the worshipers and thereby the worshipers of the church are deprived of their valuable rights guaranteed under Article 25 of The Constitution of India.

8. Per contra, the learned Special Government Pleader submitted that even though a mistake had been crept in, in the notice issued under Section 3(2) of the Act, it was immediately rectified and an errata was also issued to the notification, thereafter, final notice was issued mentioning the correct survey number of the land. According to him, since the objection was received beyond the period of 30 days that too after the date fixed of enquiry, the 2nd respondent was not in a position to conduct fresh enquiry. The acquisition was only for public purpose for laying railway lines and the land sought to be acquired was only a vacant land and therefore, the petitioner cannot have any grievance at all. Having considered the heritage value of the church building and the interest of the church, the had proposed to acquire a portion of the land belonged to the petitioner only with a width of 2.75 meters and whereas the railway authorities had acquired upto the width of 12 meters

from the other land owners in the same stretch. Therefore, according to the learned Special Government Pleader, the petitioner church would no way get affected by the acquisition and the writ petitions are only liable to be dismissed.

9. I have considered the rival submissions and perused the records carefully.

10. The primordial contention of the petitioner is that, one of the survey numbers of the land which was proposed to be acquired from the petitioner church had been wrongly mentioned in the notice issued under Section 3(2) of the Act, thereafter, it was rectified, but, before that no fresh notice was given. A perusal of the notice issued under Section 3(2) of the Act would show that survey number of one of the lands sought be acquired had been wrongly mentioned as S.No.1752/2 instead of S.No.1751/2. However, in their objection submitted before the authorities, the petitioner church did not raise any such objection that the survey number of one piece of land had been wrongly mentioned. However, on realizing the mistake that one of the survey numbers had been wrongly given, an errata was issued by the 2nd respondent on 16.08.2018 which was also duly published as contemplated under the Act. Thereafter, final notice was issued under Section 3(1) of the Act mentioning correct survey number. The petitioner church is not able to demonstrate that the wrong mentioning of the survey number of its land in the notice had caused serious prejudice to them as the mistake had been corrected at the appropriate stage much before the issuance of the final notice. It is also pertinent to mention that the petitioner church had submitted their objection mentioning the correct survey numbers of the lands which were proposed to be acquired. In the said circumstances, the contention of the petitioner church that on account of the mentioning of wrong survey number in the notice under issued Section 3(2) of the Act, the acquisition proceedings is vitiated cannot be countenanced. सत्यमेव जयते

11. The next contention of the learned counsel for the petitioner is that after issuing errata, no opportunity was given to the petitioner. This argument also cannot be countenanced for the simple reason that after the receipt of the notice under Section 3(2) of the Act, the petitioner church did not raise any objection as to the mentioning of wrong survey number, but, in their objection, they had correctly mentioned the survey number as S.No.1751/2, however, after realizing the mistake, the 2nd respondent had issued an errata, thereafter, final notice was issued under Section 3(1) of the Act. Therefore, in the considered opinion of this court, when the petitioner church was well aware of the acquisition of their

lands and, as already concluded above, no prejudice was caused to the petitioner and as such, no fresh enquiry was required to be conducted.

12. Lastly, the learned counsel for the petitioner contended that even though on the petitioner's objection for acquiring the land in question, remarks were called for from the requisitioning body, but, no further enquiry was conducted as contemplated under Section 3(2) of the Act and as such the entire acquisition proceedings acquisition proceedings insofar as the petitioner's lands are concerned is vitiated.

13. Before considering the above objection, it would be useful to refer to the relevant provisions in the Act. Section 3 (1) of the Act speaks of the power to acquire the lands which reads as follows:-

"3. (1) If, at any time, in the opinion of the Government, any land is required for any industrial purposes, or for any other purpose in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying the particular purpose for which such land is required.

(2) Before publishing a notice under sub-section (1), the Government shall, call upon the owner and any other person, who in the opinion of the Government may be interested in such land, to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.

(3) The Government may pass an order under sub-section (1) after hearing and considering the causes, if any, shown by the owner or person interested."

14. Thus, as per the provision in section 3(2) of the Act, before publishing a notice under Section 3(1) of the Act, the Government shall call upon the owner and any other person, who in the opinion of the Government may, be interested in such land, to show cause within such time as may be specified in the notice, why the land should not be acquired and the Government shall also cause a public notice to be given in such a manner, as may be prescribed.

15. Rule 3 of The Tamil Nadu Acquisition of Land for Industrial Purposes Rules, 2001 [in short, "the rules"], speaks about issuance of show cause notice specified in sub-section (2) of section 3 of the Act in the prescribed manner in Form-A. Rule 4 of the Rules, speaks of publication of public notice which reads as follows:-

"4. The Government shall cause a public notice of the substance of the show cause notice issued under sub-section (2) of section 3 in Form-B. The notice shall be published at convenient places in the locality and copies thereof fixed up in the offices of the Collector and Tahsildar."

16. Rule 6 of the Rules, speaks about hearing of objection which reads as follows:-

6. Hearing of objections by the Government.- (a) If statement of objections filed by a person who has no interest in the Land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land, within the time prescribed in rule 3 or 4, the Government shall fix a date for hearing the objections and give notice thereof to the objector or as well as to the Government or company requiring the land. Copies of the objections shall also be forwarded to such department or company and the Department or company may file on or before the date fixed by the Government, a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by- the Government, the Government shall hear the objector, or a person authorized by him in this behalf, or his pleader and the representation if any, of the department or company and record any evidence that may be produced by both in support of the objections and in support of the need for acquiring the land.

17. As per Rule 6(b) of the Rules, if any objections are received from the person interested in the land, within the time prescribed in rule 3 or 4, the Government shall fix a date for hearing the objections and give notice thereof to the objector or as well as to the department or company requiring the land. Thereafter, under Rule 6(c), an enquiry has to be conducted. After the enquiry a publication under Section 3(1) of the Act should be issued in Form-C. In the instant case, Form-A notice was served on the petitioner on 30.01.2018 and Form-B notice was published in two Tamil Dailies on 03.02.2018 whereby the date for enquiry was fixed as 06.03.2018 and the same were also affixed in the public offices on 30.01.2018. But, admittedly, the objections sent by the petitioner church by post objecting to acquire their land, had reached the authority concerned on 07.03.2018 which was after the date fixed for enquiry. As the petitioner church did not submit their objection before the time prescribed under the rule, hence, the contention of the petitioner that no enquiry as mandated under Section 3(2) of the Act was conducted cannot be countenanced.

18. As already discussed, land up to 12 meter in width was required in the entire stretch for laying railway tracks, but, while preparing land plan schedule, having considered the heritage value and the religious sentiments, the railway authorities had proposed to acquire the land only up to the width of 2.75 meters in the case of the petitioner. Thus, due consideration was given to the sentiments attached to the religious institution and its heritage. Considering the purpose for which the lands belonging to the petitioner church were sought to be acquired and the other attending circumstances, this court does not find any merit in the arguments of the learned counsel petitioner that the objections of the petitioner for acquiring their land were not properly considered and the same is liable only to be rejected.

19. For the foregoing discussions, this court does not find any merit in W.P.No.23449 of 2018 and the same deserves only to be dismissed. In so far as the other writ petition in W.P.No.11004 of 2018 is concerned, it challenges the notice issued under Section 3(2) of the Act and subsequent to the filing of the writ petition, a final notice under Section 3(1) of the Act was issued and this court in the preceding paragraph up held the validity of the same. Thus, nothing survives for adjudication in W.P.No.11004 of 2018 and the same is liable to be dismissed as infructuous.

20. In the result, (i) W.P.No.23449 of 2018: This writ petition is dismissed. No costs. Consequently, connected WMP is closed.

(ii) W.P.No.11004 of 2018: This writ petition is dismissed as infructuous. No costs. Consequently, connected WMP is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government, Transport Department,
Fort St. George, Chennai 600009.
- 2.The Land Acquisition Officer and Revenue Divisional Officer,
Chennai North Division-Tondiarpet, Chennai 600081.
- 3.The Chief Administrative Officer Electrical (Construction),
Metropolitan Transport Project (Railways) Chennai,
No.183, E.V.R. Periyar High Road, Chennai 600008.
- 4.The Assistant Executive Engineer, Metropolitan Transport
Project
Mylapore, Chennai 600004.

+2cc to Mr.P.T.Ramkumar, Advocate Sr.88093, 88092
+2cc to Mr.P.Ebenezer Paul, Advocate sr.88065,, 88064
+1cc to the Government Pleader Sr.88408

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Writ Petition
Nos.11004 & 23449 of 2018

srg 28/01/2019