

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM : THE HON'BLE Mr.JUSTICE N.SESHASAYEE

W.P.No.12507 of 2017
and W.M.P.No.13299 of 2017

Sri Arumligu Thiruvaleeswarar
Thirupurasundari Temple
Rep. by its Sole Hereditary Trustee
T.N.Shanmugavel
Residing at No.2/17, Dr.Vasudevan Road
Kilpauk, Chennai - 600 010. ... Petitioner

Vs.

- 1.The Chief Secretary
Planning Development and
Special Initiatives (S.I.) Department
Fort St.George
Chennai - 600 009.
- 2.The District Collector
' Collectorate
Thiruvallur District.
- 3.The Hindu Religious & Charitable
Endowment Board
Rep by its Commissioner
Nungambakkam High Road,
Nungambakkam
Chennai - 600 034.
- 4.Chennai Metro Rail Ltd.,
Rep by its Chairman and Managing Director
Administrative Building
Poonamallee High Road
Koyambedu, Chennai - 600 107. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents and its agents from taking physical possession of the property belonging to the petitioner situate in Nerkundram Village comprised in S.No.29 measuring an extent of 5.42 acres or thereabouts without invoking the provisions of the Land Acquisition Act or any other enactment as the case may be.

For Petitioner : Ms.Vasudha Thiagarajan
for Mr.R.Thiagarajan

For Respondents: Mr.A.Zakir Hussain
Government Advocate [for R1 &R2]
Mrs.Jayesh B.Dolia [for R4]

O R D E R

The present petition is filed for a direction to forbear the respondents not to interfere with the petitioner's possession without resort to provisions of the Land Acquisition Act, 1894.

1.1. The case of the petitioner as disclosed by a set of affidavits filed in aid of the writ petition is that he is the hereditary trustee of Sri Arulmigu Thiruvaleeswarar Thirupurasundari Temple situate at Poonamallee High Road, Nerkundram, Chennai. It was stated to be a private temple and was originally owned and possessed by one Mrs.Chandrammal, from whom the petitioner's great grandfather Pon Irula Pillai had purchased. Later, Vide sale deed dated 08.04.1941, Pon Irula Pillai had conveyed the property to the petitioner's father Neelamegam Pillai. By succession the petitioner became entitled to manage the said property. The temple owns property in Survey No.29 of Nerkundram Village.

1.2. It is also averred that there are civil litigations touching upon the title to the property between the petitioner and the HR&CE Department, which is now pending in O.S.No.157 of 2010 before the Sub Court, Poonamallee. Be that as it may, a portion of the property in Survey No.29 and 31 of Nerkundram Village were earlier sought to be acquired for a project concerning Chennai Metro Rail Ltd., the fourth respondent herein, and the petitioner moved this Court in W.P.No.12972 of 2011, in which it disclosed the litigious duel involved in the aforesaid civil suit. This writ petition was disposed of on 03.01.2012 with an observation that the project shall continue without any interruption and the petitioner may decide its title dispute with the HR&CE Department in the suit and that the compensation amount payable shall be deposited in the civil suit and the same be withdrawn based on the outcome of the civil suit.

1.3 While so, when the petitioner visited the temple on 21.04.2017, he was informed by some men who were working in and around that area that they have been stationed in the said place to commence the levelling operation and also to evict the persons who are in occupation of the said property. While, property adjacent to S.F.No:29 measuring 7.46 acres have already

been surrendered to Chennai Metro Rail Ltd., for its project, so far as petitioner's property in Survey No.29 is concerned, the authorities are trying to enter upon the same without acquiring it. Since the alleged encroachment came to the knowledge of the petitioner, the said petitioner has filed the writ petition.

2. Heard Mrs.Vasuda Thiagarajan, learned counsel appearing for the petitioner, Mr.A.Zakir Hussain, learned Government Advocate for respondents 1 and 2 and Mr.Jayesh B.Dolia for the fourth respondent. Respondents 1 and 2 have not preferred any counter and the fourth respondent has filed his counter.

3. The only point the counsel for the petitioner insisted is that the part of the property in Survey No.29 of Nerkundram Village was acquired and taken possession of. S.F No.29 has an extent of 5.42 acres, but as per the G.O.Ms.No.46 Planning, Development and Special Initiatives (S.I) Department dated 2.2.2011, the Government has only granted administrative approval for 12425 sq.mts in 5.42 acres that too on the footing that the property is a poramboke property. In the context of the earlier writ proceedings, if the fourth respondent were to take possession of the property, the same cannot exceed 12,425 sq.m, or approximately 3.07 acres, and this would leave a balance of 2.35 acres, and the respondents has no authority to disturb petitioner's possession of this unacquired extent of land. The compensation too is payable only for the extent already acquired, and who takes the the compensation is hinged to the outcome of the civil suit in O.S.No.157 of 2010.

4. In the final analysis this case falls within a narrow space: Where the demarcating line between that portion of the land which has been acquired and that which was outside the earlier acquisition. If this is known, both sides peace in the minds of the parties can be restored, though petitioner's title to whatever property claims has to be decided by the civil court. It is therefore, necessary for the fourth respondent along with the second respondent to fix or determine the southern boundary of Survey No.29 of Nerkundram Village and to demarcate the extent of 12425 sq.mtrs allotted Vide G.O.Ms.No.46 dated 2.2.2011 with the help of the revenue officials. This, the respondents second and fourth shall do it after putting the petitioner on notice. The petitioner shall lend its fullest co-operation and at no time shall obstruct any activity as is presently directed by this Court. There shall not be any more embargo operating against the Chennai Metro Rail Ltd., to proceed with the project. In case of any dispute as to where demarcating line ought to be, the petitioner is well advised to resort to appropriate remedies before the civil court as this Court may not be able to resolve it.

5. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

ds

To:

- 1.The Chief Secretary
Planning Development and
Special Initiatives (S.I.) Department
Fort St.George
Chennai - 600 009.
- 2.The District Collector
Collectorate
Thiruvallur District.
- 3.The Hindu Religious & Charitable Endowment Board
Rep by its Commissioner
Nungambakkam High Road,
Nungambakkam
Chennai - 600 034.
- 4.Chennai Metro Rail Ltd.,
Rep by its Chairman and Managing Director
Administrative Building
Poonamallee High Road
Koyambedu, Chennai - 600 107.

+ 1 cc to Mr. Government Pleader Sr.12523
+ 3 ccs to Mr.R. Thiagarajan, Advocate SR.31696

W.P.No.12507 of 2017

KK (CO)
EU (22/03/2018)