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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.03.2018

DELIVERED ON : 06.04.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

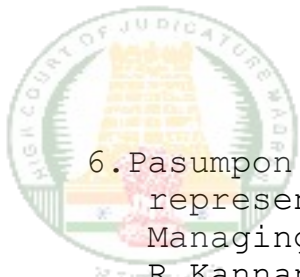
W.A. (MD) No.247 of 2007
and
M.P (MD) Nos.1 and 4 of 2007
and
C.M.P (MD) No.6291 of 2016

Indira Gandhi College for Women Committee,
represented by its
Secretary,
G.Mohan

... Appellant/
Writ Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its
Secretary,
Information and Tourism Department,
Kuralagam,
Chennai.
- 2.The Director/Additional Secretary to
the Government of Tamil Nadu,
Information and Tourism Department, Kuralagam,
Chennai.
- 3.The District Collector,
Madurai District,
Madurai.
- 4.The Revenue Divisional Officer,
Madurai,
Madurai District.
- 5.The Tahsildar,
Madurai South,
Madurai District.



6. Pasumpon Muthuramalinga Thevar Trust,
represented by its
Managing Director,
R. Kannan.

[Substituted vide order of this Court dated 17.08.2009 made in M.P (MD) No.1 of 2009 in W.A. (MD) No.247 of 2007.]

7. A. Rajendran (died)

8. S. Parankundram

... Respondents/
Respondents

[R.7 & R.8 were impleaded as per order of this Court dated 23.10.2007 made in M.P (MD) Nos.2 and 3 of 2007 in W.A. (MD) No.247 of 2007.]

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P (MD) No.1480 of 2007, dated 10.07.2007.

Prayer in WP (MD). 1480/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declaring the notification issued by the 1st respondent in notification no. II(2)/IT/938/2005, u/s. 4(1) of the Land Acquisition Act, 1894 published in the Tamilnadu Government Gazette dated 28/12/2005 and the notification issued by the 2nd respondent, published in the Tamilnadu Government Gazette dated 22/02/2006 and the consequential declaration issued by the 1st respondent U/s. 6 of the Land Acquisition Act, 1894, in Notification No. II(2)/ITM/453 (b)/2006 published in the Tamilnadu Government Gazette dated 30.08.2006 and the Notification issued by the 3rd Respondent in his proceedings Roc.No.59481/05/B4 dated 18.01.2007 published in Madurai District Gazette extraordinary dated 20.01.2007 and quash the same as illegal.

For Appellant : Mr.B.Saravanan

For Respondents : Mr.A.K.Baskarapandian,

Special Government Pleader for R.1 to R.5

Mr.T.K.Gopalan
for Mr.S.Vellaichamy for R.6

Mr.S.Mariappa Murali for R.8

Mr.K.Hemakarthiskeyan
for proposed ninth respondent

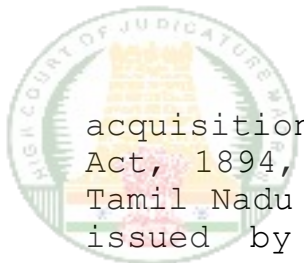
R.7 - Died.

JUDGMENT

M. SATHYANARAYANAN, J.

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The appellant is the writ petitioner in W.P (MD) No.1480 of 2007.
The appellant/writ petitioner made a challenge to the land



acquisition proceedings under Section 4(1) of the Land Acquisition Act, 1894, [hereinafter referred to as 'the Act'] published in the Tamil Nadu Government Gazette, dated 28.12.2005 and the notification issued by the second respondent, published in the Tamil Nadu Government Gazette, dated 22.02.2006 and the consequential declaration issued by the first respondent under Section 6 of the Act in the Tamil Nadu Government Gazette, dated 30.08.2006 as well as the notification issued by the third respondent in his proceedings dated 18.01.2007 published in Madurai District Gazette Extraordinary dated 20.01.2007. The said writ petition, after contest, came to be dismissed on 10.07.2007 and challenging the legality of the same, the present writ appeal is filed by the appellant/writ petitioner.

2. The Secretary of the appellant/writ petitioner - society has sworn to the affidavit filed in support of the writ petition and it is averred as follows:

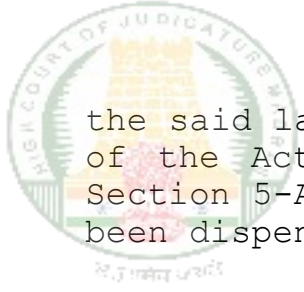
2.1. Indira Gandhi College for Women Committee is a registered society under the Tamil Nadu Societies Registration Act bearing Registration No.19 of 1985 and the said society has been constituted to cater the educational needs of poor people residing in and around Thirunagar area of Madurai District and accordingly, the appellant/writ petitioner - society is running "Indira Gandhi Memorial Matriculation Higher Secondary School".

2.2. The fifth respondent, all of a sudden, sent a communication dated 16.06.2005 calling upon him to appear before the fourth respondent in his office on 17.06.2005 at 03.00 p.m., to have a meeting on converting the school building of the appellant/writ petitioner - society situated at Thirunagar, Thirupparankundram Village, Madurai District, as a Memorial for late.Pasumpon Muthuramalinga Thevar, wherein he lived and breathed his last.

2.3. The members of the appellant/writ petitioner - society appeared before the fourth respondent and explained to him and also pointed out that in the event of a portion of the land in which the school is functioning is acquired for the purpose of converting the same as a Memorial, the same would jeopardise the activities of the school and also intimated about the function of the school committee.

2.4. The second respondent, in the meanwhile, issued a paper publication in the Tamil vernacular, viz., Dhina Thanthi and Dhina Boomi, dated 24.12.2004, publishing a notification under Section 4 (1) of the Act, wherein it was notified that the land of the appellant/writ petitioner - society admeasuring to an extent of 5,035 sq. ft. in S.No.114/1A2 situated at Thiruparankundram village, Madurai South Taluk, Madurai District, is needed for a public purpose to establish "Pasumpon Muthuramalinga Thevar Memorial Building".

2.5. It is further stated in the said notification that in view of the urgency, the Governor of Tamil Nadu had directed to acquire

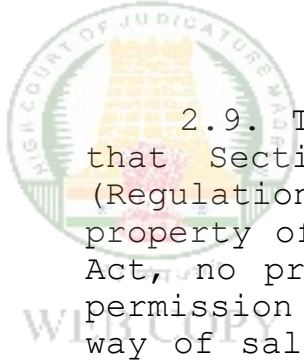


the said land by invoking the urgency provisions under Section 17(1) of the Act and further, it was ordered that the procedure under Section 5-A of the Act by invoking Section 17(4) of the Act has also been dispensed with considering the urgency of the case.

2.6. The first respondent has also published a notification in Tamil Nadu Government Gazette dated 28.12.2005 wherein it is once again reiterated the acquisition of the said land under Section 17 (1) of the Act. The first respondent, in the further notification dated 28.12.2005, the Governor of Tamil Nadu in exercise of the powers conferred by Section 4(2) of the Act, had authorised the fourth respondent to exercise the powers conferred under Section 4 (2) of the Act and in view of the urgency, the enquiry under Section 5-A of the Act shall not be applicable to the present case and it is also followed by a corrigendum issued in the Tamil Nadu Government Gazette dated 22.02.2006 and thereby, Section 17(1) of the Act was inserted instead of Section 4(1) of the Act.

2.7. A declaration under Section 6 of the Act was also published in the Tamil vernacular daily, viz., Dinamalar, on 08.09.2006 referring to G.O.Ms.No.173, dated 21.08.2006, declaring that the above mentioned land is to be acquired for the purpose of public, namely, for establishing Pasumpon Muthuramalinga Thevar Memorial and yet another notification was published in the Madurai District Gazette on 20.01.2007, wherein, a direction was issued by the third respondent under Section 7 of the Act to acquire the above mentioned land for construction of the said Memorial, for which, the fourth respondent was appointed to perform the functions of the Collector under the Act.

2.8. The fourth respondent has issued a notification under Sections 9(3) and 10 in Form VII of the Act, dated 22.12.2006 and the appellant/writ petitioner - society was directed to appear before the fourth respondent on 09.01.2007 for an enquiry for fixing of the compensation and accordingly, the office bearers appeared before the fourth respondent and gave a representation dated 08.01.2007 submitting their objections for continuing with the land acquisition proceedings. However, a notifications under Sections 9 (3) and 10 of the Act were issued on 01.02.2007 for appearance before the fourth respondent for enquiry on 19.02.2007 to decide upon the quantum of compensation and once again, the Committee members appeared and submitted their objections as to the said acquisition. The appellant/writ petitioner - society took a stand that at any stretch of imagination, the construction of the Memorial for a particular individual cannot be termed as a public purpose and that apart, the provisions of the Act cannot invoked to acquire the land or a building which is already used for a public purpose by the appellant/writ petitioner - society to run an educational institution and that the notification under Section 4(1) and the declaration under Section 6 of the Act failed to reflect any public purpose for which the land of the appellant/writ petitioner - society is sought to be required.



2.9. The appellant/writ petitioner - society also pointed out that Section 34 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, also imposes a restriction on alienation of property of a private school and under Section 31(1)(a) of the said Act, no property of a private school shall except with a previous permission in writing of the competent authority, be transferred by way of sale, exchange, mortgage, charge, pledge, lease, gift or in any other manner whatsoever and as such, the land acquisition proceedings are illegal.

2.10. The appellant/writ petitioner - society also took a stand that in the notification published under Section 4(1) of the Act, nowhere it is stated that the powers under Section 17(4) of the Act were invoked; whereas it merely states that Section 17(1) of the Act was invoked for acquisition of the land of the appellant/writ petitioner - society and even in the corrigendum, Section 17(1) of the Act was inserted instead of Section 4(1) of the Act at two places in the original notification, dated 28.12.2005 and as such, Section 17(4) of the Act was not invoked specifically and therefore, hearing of objections contemplated under Section 5-A of the Act cannot be dispensed with.

2.11. It is further averred by the appellant/writ petitioner - society that invocation of Section 7 of the Act by the third respondent empowering the fourth respondent to acquire the land is illegal and also without jurisdiction and that apart, even before obtaining appropriate orders from the competent authority, the fourth respondent started proceedings under Section 9 of the Act as early as on 22.12.2006 and hence, the proceedings for taking possession of the land under Section 9 of the Act is illegal. Therefore, the appellant/writ petitioner - society prayed for quashment of the entire land acquisition proceedings.

3. The writ petition was entertained and notices were ordered.

4. The fourth respondent has filed the counter affidavit and took a stand that the Secretary of the appellant/writ petitioner - school was informed about the intention of the Government to convert the land as a living monument for a person who has devoted his life for freedom struggle and the Memorial would be ornamental rather than impediment and all the statutory requirements have been complied with. The representation submitted by the appellant/writ petitioner - society opposing the acquisition of land was also examined in detail and has to be rejected for the reason that the acquisition was for a public purpose.

5. Insofar as the legal plea raised by the appellant/writ petitioner - society that the fourth respondent took a stand that Section 17(1) of the Act permits the Collector, though no award was passed on expiration of 15 days from the publication of notification under Section 9(1) of the Act, permits taking possession of any land



needed for public purpose and Section 17(4) of the Act permits dispensation of notice under Section 5-A of the Act.

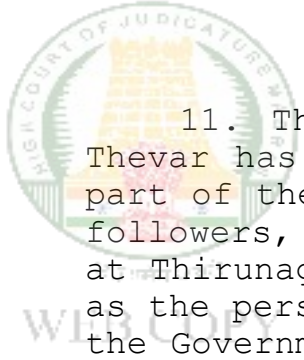
6. In paragraph 11 of the counter affidavit, it is averred by the fourth respondent that "As the aura that surrounds the name Pasumpon Muthuramalinga Thevar is clear evidence of the overwhelming popularity of this great personality and of the few from these parts, who adorned the portals of fame by his unflinching drive, dint of honesty, sincerity and hard work and his tireless strivings towards achievement of independence from the foreign oppression immortalised him and gained him untold glory, fame and he is the household name for several lakhs of people who not only adore him, but also he is held aloft on a high pedestal equating him with the innumerable deities which adorn every street corner in the famous city of Pandiyas. His clarion call echoes in the minds of more than 30 to 35 percent of people drawn from these difference sects predominantly having domicile over the southern Tamil Nadu. Hence the decision announced by the Chief Minister on the floor of the Assembly drew lot of cheers from the public and as such, no individual shall be allowed to question the decision of the Government in acquiring the piece of land for public purpose since mere mention is sufficient to attract the wrath of innumerable people."

7. The fourth respondent also pointed out that out of the total extent of 19,618 sq. ft., of lands, only an extent of 5,035 sq. ft., of lands are required for the Memorial and the remaining space and the land proposed to be given to the appellant/writ petitioner - school are sufficient to run a Higher Secondary School in a suburban like Thirunagar.

8. It is also the stand of the fourth respondent that permission of the competent authority as contemplated under Section 31 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is not required since as eminent domain, the Government grants them absolute right to take any land for public purpose.

9. Pendency of the writ petition, Pasumpon Muthuramalinga Thevar Trust, represented by its Managing Director, P.Valai Thevar, came to be impleaded as the sixth respondent, vide order of this Court dated 09.06.2007 passed in M.P(MD)No.2 of 2007 in W.P(MD) No.1480 of 2007.

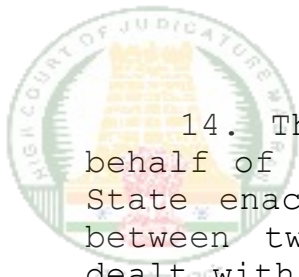
10. The first respondent has also filed the counter affidavit in tune with the stand of the fourth respondent and reiterated the stand that the Government as eminent domain, formed the subjective satisfaction to acquire the land for a public purpose by invoking the urgency provisions and it cannot be challenged in the writ petition.



11. The Trust also took a stand that Pasumpon Muthuramalinga Thevar has lived and breathed his last in plot No.A-5, which forms part of the school premises and it is considered as a temple by the followers, admirers and daily thousands of people visited that place at Thirunagar to have dharsan. The sixth respondent - Trust as well as the persons having similar interest are making representations to the Government to convert the place as a Memorial for the great man and the Government took a fair stand to convert the said place as a Memorial and as such, there will not be any inconvenience to the school if a piece of land and a superstructure therein is converted as a Memorial for Pasumpon Muthuramalinga Thevar.

12. The appellant/writ petitioner - society filed an additional affidavit dated 21.06.2007 and pointed out that as per Section 4(1-A) of the Act, the Collector in respect of the land not exceeding 40 acres in extent the value of which does not exceed Rs.25,00,000/- (Rupees Twenty Five Lakhs only); the Commissioner of Land Administration in respect of land not exceeding 75 acres in extent the value of which exceeds Rs.25,00,000/- (Rupees Twenty Five Lakhs only) but does not exceed Rs.50,00,000/- (Rupees Fifty Lakhs only) and the Government, in other cases, is competent to acquire the land, whereas by virtue of the impugned notification only 5,035 sq. ft., of land is ought to be acquired and as such, the impugned notification under Section 4(1) of the Act is illegal and without jurisdiction as it is in violation of the Section 4(1-A) of the Act. The appellant/writ petitioner - society also raised an additional ground that the mandatory requirement of Section 6(2) of the Act has not been properly complied with and on that ground also, the declaration issued under Section 6 is to be declared as illegal.

13. The learned Single Judge on considering the materials, recorded a finding that it is not open to the appellant/writ petitioner - society to question the public purpose because the State being convinced that there is a public demand and hence, they having a duty imposed on them, wanted to establish a Memorial in remembrance of Pasumpon Muthuramalinga Thevar. The learned Judge has also taken note of Article 51-A(a) and (b) of the Constitution of India and also highlighted the historical facts in justification of establishing a Memorial in memory of Pasumpon Muthuramalinga Thevar. The learned Judge, from paragraphs 7 to 11 of the impugned order, had spoken about the glory of late Pasumpon Muthuramalinga Thevar and observed that he was taken ill and was under constant treatment and he breathed his last on 29.10.1963 in the place known as Thirunagar Bungalow where he was staying and the learned Judge, in paragraph 15, observed that "When the State invokes the provisions of the Land Acquisition Act publishes the notification under Section 4(1) of the Central Act and declares the public purpose, unless the purpose is held to be not public purpose, it is not open to the persons like the petitioner to oppose such a move and try to argue that the memorial could be located elsewhere."



14. The learned Judge also dealt with the submission made on behalf of the appellant/writ petitioner as to the invocation of the State enactment of 1956 and held that the question of repugnancy between two legislations does not arise. The learned Judge also dealt with the point urged with regard to non-quoting of Section 17(4) of the Act and held that "mere non-quoting of the relevant provisions or misquoting of the relevant section does not invalidate the Government Order and so long as such power of the Government exists in terms of exercising power under Section 17(4) and the said power is exercised in terms of the circumstances justifying the exercising of the power, the petitioner cannot find any fault with the same."

15. The learned Judge has also taken into consideration the decision in General Manager, Southern Railway, Madras v. Chintadripet Boys Higher Secondary School and others reported in AIR 1995 Madras 150, wherein the acquisition of land for the construction of railway line under Mass Rapid Transport System came to be justified for a public purpose and also the learned Judge took note of an yet another decision in Dharam Pal Goel (D) by LRs., v. State of Haryana and others reported in (1997) 4 Supreme Court Cases 186, which dealt with the acquisition for formation of buffer road to facilitate plantation of the trees to contain pollution caused by the vehicular traffic and found that the said acquisition is justified and it is not for the school to contend that in the event of acquisition of land, they may not be in a position to run the school and also took note of the fact that every year Thevar Jayanthi is celebrated by the school management and declares holiday and the public are allowed to come and pay homage and respect to the portrait of Pasumpon Muthuramalinga Thevar and further held that if any Memorial is established, it will add prestige to the school and it will have a new identity in that locality. The learned Judge citing the said reasons, dismissed the said writ petition, vide impugned order dated 10.07.2007 and challenging the legality of the same, the present appeal is filed.

16. The appellant/writ petitioner - society, pendency of the appeal, filed M.P(MD)No.1 of 2007 and this Court, vide order dated 01.08.2007, has directed the District Collector, Madurai District; representative of the appellant/writ petitioner - society and representative of the sixth respondent - Trust to examine the feasibility of locating the appellant/writ petitioner - school in an extent of 2.12 acres in S.No.428 at Thiruparankundram Village, Madurai Taluk and accordingly, the said exercise was carried out by the District Collector, Madurai District.

17. When the appeal was listed on 28.02.2018 for hearing, the District Collector, Madurai District, filed a report dated 20.02.2018 and took a stand that despite meetings held on 14.02.2018 and 19.02.2018, the appellant/writ petitioner - society as well as the sixth respondent - Trust did not come forward for amicable settlement.



18. The learned Counsel for the appellant/writ petitioner - society made the following submissions:

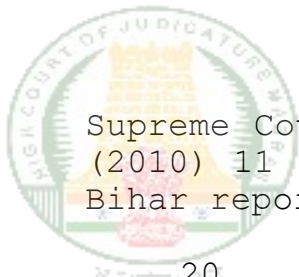
18.1. Admittedly, Pasumpon Muthuramalinga Thevar breathed his last on 29.10.1963 in a building which now forms part of a school and even as per the stand of the sixth respondent - Trust, for the past 40 years, representations were repeatedly submitted to convert the said building as a Memorial and it was taken note of by the Government and took a conscious decision to acquire the said piece of land with superstructure for conversion as a Memorial for late Pasumpon Muthuramalinga Thevar and as such, there is no necessity or reasons have been made out to invoke the urgency provisions and thereby, dispensing with the enquiry under Section 5-A of the Act.

18.2. The Government did not invoke Section 17(4) of the Act and even in the corrigendum, insertions of Section 17(1) of the Act alone was made and as such, the urgency provision ought not to have been removed. In the event of acquisition of a portion of the land along with superstructure, the mandatory requirement for acquisition of a minimum extent of land in which a private school is functioning, as contemplated under the Tamil Nadu Recognised Private Schools (Regulation) Act, has to be necessarily followed and in that event, the school cannot function.

18.3. The school caters the need of students hailing from poor and downtrodden communities and in the event of acquisition of land and conversion of the superstructure exist on the land as a Memorial, the school has to look for alternative place and despite extending maximum co-operation to find out and locate the school, on account of the attitude exhibited by the sixth respondent - Trust, it could not be fructified. Before issuing the impugned notification, the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, especially, Section 34, which imposes restriction on alienation of a school property, have not been taken note of by the authorities concerned and in any event, the first respondent ought to have consulted or obtained the views of the school Committee before venturing into the acquisition proceedings.

18.4. The provisions of Section 4(1-A) of the Act have not been complied with, for the reason that since the impugned notification speaks about the acquisition of 5,035 sq. ft., of land, the District Collector, Madurai District, ought to have issued the notification and not the Government. The representation dated 08.01.2007 submitted by the appellant/writ petitioner - society has not been considered at all and the official respondents went by the public sentiments, especially, with regard to law and order problem and as such, the entire land acquisition proceedings are vitiated.

19. The learned Counsel for the appellant/writ petitioner - society in support of his submissions, has placed reliance upon the decisions in (i) Om Prakash v. State of U.P reported in (1998) 6



Supreme Court Cases 1; (ii) Anand Singh v. State of U.P reported in (2010) 11 Supreme Court Cases 242; and (iii) Prabhawati v. State of Bihar reported in (2014) 13 Supreme Court Cases 721.

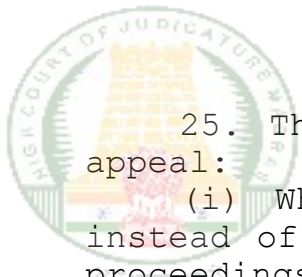
20. Per contra, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the official respondents would contend that it is not in serious dispute that late Pasumpon Muthuramalinga Thevar has contributed very much towards freedom struggle and the long standing requisition for conversion of a building where he breathed his last as a Memorial has been fulfilled and taking note of the public demand and sentiments, a conscious decision has been taken by the Government to acquire the land with a piece of superstructure for conversion as a Memorial and as such, it cannot be faulted with.

21. It is the further submission of the learned Special Government Pleader appearing for the official respondents that the learned Judge has properly appreciated the factual aspects and legal position and rightly reached the conclusion that the power of eminent domain by the Government cannot be questioned by the appellant/writ petitioner - society and in the absence of any perversity, the well-considered order passed by the learned Judge cannot be interfered with.

22. It is the further submission of the learned Special Government Pleader appearing for the official respondents that after entertaining of the writ appeal, very many efforts have been taken by the District Collector, Madurai District, to find out an alternative land for shifting the school and on account of the attitude exhibited by the school, the efforts could not be fructified and would further add that the functioning of the school will not be interfered with or hindered in any manner in the event of location of the Memorial.

23. Mr.T.K.Gopalan, learned Counsel appearing on behalf of Mr.S.Vellaichamy, learned Counsel for the sixth respondent - Trust has stated about the selfless acts of late Pasumpon Muthuramalinga Thevar and would contend that apart from Balagangadhara Tilakar, Pasumpon Muthuramalinga Thevar was incarcerated for over a decade opposing British reign and also donated his properties for the benefit of poor and downtrodden communities and still worshipped as a God by the people belonging to three sects and the Government rightly took a decision to establish a Memorial and since it is purely for a public purpose and that the need is also very urgent, the land acquisition proceedings cannot be faulted with and prays for the dismissal of this writ appeal.

24. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the materials placed before it.



25. The following issues arise for consideration in this writ appeal:

(i) Whether wrong quoting of provision, i.e., Section 17(1) instead of Section 17(4) of the Act, vitiates the land acquisition proceedings?

(ii) Whether the land acquisition proceedings initiated by the Government instead of the District Collector, under Section 4(1-A) of the Act, is sustainable?

(iii) Whether the invocation of urgency provisions by the first respondent and thereby, dispensing with the enquiry under Section 5-A of the Act, is sustainable?

(iv) To what relief, the appellant/writ petitioner - society is entitled to?

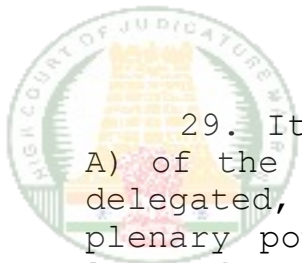
Issue No.(i):

26. The learned Judge in paragraph No.22 of the impugned order dealt with the issue and found that in G.O.Ms.No.229, Information and Tourism Department (Memorial), dated 01.12.2005, has expressed the intention to dispense with the enquiry under Section 5-A of the Act and recorded a finding that mere non-quoting of the relevant provisions or misquoting of the relevant section does not invalidate the Government Order and that so long as such power of the Government exists in terms of exercising power under Section 17(4) of the Act and the said power is exercised in terms of the circumstances justifying the exercising of the power, it cannot be found fault with and also placed reliance upon the judgment in Director General of Police, A.P v. K.Ratnagiri reported in 1990 (3) Supreme Court Cases 60, wherein it is held that "a wrong wording in the order does not take away the power if it is otherwise available."

27. This Court in the later portion of the order deals with the issue relating to invocation of urgency provisions by the Government and insofar as this issue is concerned, this Court is of the considered view that mere quoting of wrong provision does not validate the entire land acquisition proceedings. The materials placed before this Court would indicate that the Government wanted to invoke the urgency provisions by dispensing with Section 5-A of the Act for the purpose of acquiring a piece of land with superstructure for setting up a Memorial for late Pasumpon Muthuramalinga Thevar. No doubt, in the corrigendum also, there was an insertion inserting Section 17(1) of the Act and not Section 17(4) of the Act. However, the same would not invalidate the land acquisition proceedings and therefore, sustained the findings recorded by the learned Judge. Therefore, Issue No.(i) is answered in negative against the appellant/writ petitioner - society.

Issue No.(ii):

28. No doubt, as per Section 4(1-A) of the Act, the District Collector ought to have initiated the land acquisition proceedings and ultimately, the Government took a call.



29. It is to be pointed out at this juncture that Section 4(1-A) of the Act is in the nature of delegation and once the power is delegated, the delegatee of such a power is not denuded of its plenary powers and the said aspect has been rightly noted by the learned Judge in paragraph 21 of the impugned order and as such, the land acquisition proceedings impugned is not vitiated on account of non-following of Section 4(1-A) of the Act. Therefore, Issue No.(ii) is answered in negative against the appellant/writ petitioner - society.

Issue Nos.(iii) and (iv):

30. A perusal of the impugned order passed in the writ petition, which is the subject matter of challenge in this writ appeal would clearly reveal that the learned Judge before going into the merits of the matter, took a decision to dismiss the writ petition and insofar as the greatness of late Pasumpon Muthuramalinga Thevar, has collected materials from his own sources, i.e., (1) Unions in Conflict by Eamon Murphy (1981), Australian National University Publication; and (2) Mudisuda Mannar Pasumpon Muthuramalinga Thevar by A.R.Perumal (2006) [Kumaran Publication] and the same is indicated in paragraph 12 of the impugned order.

31. It is not in doubt that Pasumpon Muthuramalinga Thevar was a great freedom fighter and was incarcerated for over a decade in opposing the British reign and breathed his last on 29.10.1963 in a superstructure which also forms part of the school. Therefore, the primordial issue now arises for consideration, is whether the need for establishment/conversion of the said place as a Memorial, is very urgent and as a consequence, the enquiry under Section 5-A of the Act should have been dispensed with?

32. The following dates are important:

Notification under Section 4(1) of the Act published in news papers	24.12.2005
Notification under Section 4(1) of the Act published in the Tamil Nadu Government Gazette	28.12.2005
Corrigendum	22.02.2006
Declaration under Section 6 of the Act published in the Tamil Nadu Government Gazette	30.08.2006
Declaration under Section 6 of the Act published in the News paper publication	08.09.2006
Notice under Sections 9(3) and 10 of the Act in Form VII	22.12.2006
The objections filed by the appellant/writ petitioner - society	08.01.2007
Notification under Section 7 of the Act published in Madurai District Gazette	20.01.2007

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33. It is relevant to extract hereunder paragraph 11 of the



counter affidavit filed by the fourth respondent in the writ petition:

"11. ... His clarion call echoes in the minds of more than 30 to 35 percent of people drawn from three difference sects predominantly having domicile over the southern Tamilnadu. ...

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... no individual shall be allowed question the decision of the Government in acquiring this piece of land for public purpose since mere mention is sufficient to attract the wrath of innumerable people. ..."

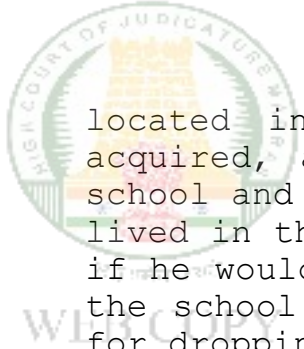
[emphasis supplied]

34. The counter affidavit of the fourth respondent states that the clarion call of Pasumpon Muthuramalinga Thevar echoes in the minds of more than 30 to 35 percent of people drawn from three difference sects predominantly having domicile over the southern Tamilnadu. The said averment implies that a particular sect in which, later Pasumpon Muthuramalinga Thevar belonged, evinced great interest in establishing the Memorial. In later portion of the paragraph 11 of the counter affidavit, it is averred that "... since mere mention is sufficient to attract the wrath of innumerable people." If both the words read together, it appears that in order to satisfy the need of the people belonging to a particular sect and apprehending law and order problem from them, a decision has been taken by the Government to invoke the urgency provision and thereby, dispensing with the enquiry under Section 5-A of the Act.

35. The Government is of the people, for the people and by the people and on account of taking such a stand, it is made to appear that the Government is yielding to the pressure of the people belonging to a particular sect and also apprehends law and order problem.

36. It is also to be noted at this juncture that the appellant/writ petitioner - society submitted a detailed representation dated 08.01.2007 to the fourth respondent pointing out that in memory of the Prime Minister late Indira Gandhi, the land admeasuring to an extent of 45 cents along with superstructure bearing Door No.A-5 wherein late Pasumpon Muthuramalinga Thevar breathed his last, was purchased and at present, it is having classes from Kindergarten to 12th Standard. 42 class rooms have been constructed and 72 teachers imparted education to 1,372 students and it is having a pass percentage of 94% to 97.4% in S.S.L.C (10th Standard) and H.S.C. (12th Standard) respectively.

37. The appellant/writ petitioner - school in the said representation also pointed out that they have purchased the said land along with superstructure 28 years after the demise of late Pasumpon Muthuramalinga Thevar and each and every year, celebrated "Thevar Jayanthi" in a grand manner and also declared a holiday on that day and permitted the public to pay their respect to him. It was also pointed out to the fourth respondent that the school is



located in 19,618 sq. ft., and if 5,035 sq. ft., of land is acquired, as per Rules, they may not be in a position to run the school and also pointed out that late Pasumpon Muthuramalinga Thevar lived in the superstructure bearing Door No.A-5 for a few months and if he would have been alive, he would have supported the running of the school and not the construction of a Memorial and hence, prays for dropping of the land acquisition.

38. In paragraph 7 of the counter affidavit of the first respondent, the said official took a stand that the said representation was examined in detail and the same has to be rejected as the acquisition was for a public purpose and in the award enquiry, the appellant/writ petitioner - society had not participated and thus, the award came to be passed.

39. In the considered opinion of this Court, the said representation ought to have been considered by the first respondent in a proper perspective for the purpose of taking a decision to invoke the urgency provisions, but unfortunately the concerned authority has failed to do so.

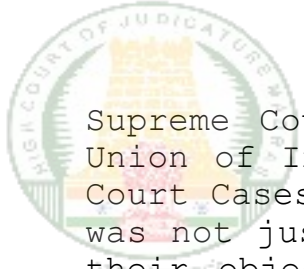
40. The stand taken by the sixth respondent - Trust would also disclose that they are repeatedly making representation and requested the Government to set up a Memorial for nearly 40 years and at last, the Government took a decision in the form of announcement in the floor of the Assembly to set up a Memorial.

41. Pendency of the writ appeal, in terms of the order passed by the Government, the District Collector, Madurai District, namely, the third respondent herein, convened a joint meeting and in his report, dated 20.02.2018, pointed out that in the said meetings, no amicable solution has been arrived at.

42. Let this Court survey various decisions rendered by this Court as well as the Honourable Supreme Court as to the need and requirement for invoking the urgency provisions and thereby, dispensing with the pre-acquisition enquiry.

43. In Nandeshwar Prasad v. State of U.P reported in 1964 (3) SCR 425, the Honourable Supreme Court held that "it would be sufficient if the records borne out such satisfaction for invocation of the urgency provisions". However, in the case on hand, all the records have not been produced and the counter affidavit filed by the respondents 1 and 4 based on records, also did not disclose the need for invoking the urgency provisions.

44. In Babu Ram v. State of Haryana reported in (2009) 10 Supreme Court Cases 115, the acquisition proceedings was initiated under the Land Acquisition Act, 1894, for construction of sewage treatment plant, but invoking the urgency provisions under Section 17(4) of the said Act and it was put to challenge. The Honourable

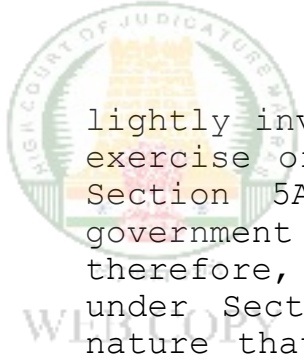


Supreme Court after placing reliance upon the earlier decision in Union of India v. Krishnan Lal Arneja reported in (2004) 8 Supreme Court Cases 453, found that the invocation of the urgency provisions was not justified and granted opportunity to the appellants to file their objections under Section 5-A of the Act. It is relevant to extract hereunder paragraph 16 of the said decision relied on by the Honourable Supreme Court in Union of India v. Krishnan Lal Arneja (cited supra):

"16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration."

45. In Anand Singh v. State of U.P. reported in 2010 (7) SCALE 353 : (2010) 11 Supreme Court Cases 242, the legality of invocation of emergency provisions for establishment of a residential colony by the Gorakhpur Development Authority came up for consideration and in paragraph 30 of the judgment, it is observed as follows:

"... The exceptional and extraordinary power of doing away with an enquiry under Section 5A in a case where possession of the land is required urgently or in unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be



lightly invoked. The guideline is in built in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5A. Exceptional the power, the more circumspect the government must be in its exercise. The government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5A."

In the very same paragraph, it is observed as follows:

"Upon challenge being made to the use of power under Section 17, the government must produce appropriate material before the court that the opinion for dispensing with the enquiry under Section 5A has been formed by the government after due application of mind on the material placed before it. It is true that power conferred upon the government under Section 17 is administrative and its opinion is entitled to due weight, but in a case where the opinion is formed regarding the urgency based on considerations not germane to the purpose, the judicial review of such administrative decision may become necessary. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of urgency under Section 17 (1) are not stated in the provision itself."

46. In *Dev Sharan v. State of U.P.*, reported in 2011 (3) SCALE 369, justifiability of invoking the emergency provisions as well as lapse of publication of Section 4(1) and Section 17 notifications and Section 6 declaration, came up for consideration and in paragraph 18, it is observed as follows:

"Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts, especially the Higher Courts, cannot afford to act as mere umpires."

In the said decision, it was found that the invocation of emergency provisions was not justified.

47. In *Radhy Shyam v. State of U.P.*, reported in (2011) 5 Supreme Court Cases 553, the Honourable Supreme Court has considered the development of the jurisprudence and law with respect to invoking of the urgency provisions under Section 17 vis-a-vis right of the land owner to file objections and opportunity of

hearing and enquiry under Section 5-A and it is relevant to extract hereunder paragraph 77:

"77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

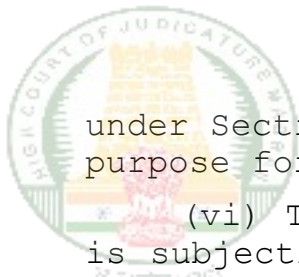
(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. - Dwarkadas Shrinivas v. Sholapur Spg., & Wvg., Co. Ltd., [AIR 1954 SC 119]; Charanjit Lal Chowdhury v. Union of India [AIR 1951 SC 41]; and Jilubhai Nanbhai Khachar v. State of Gujarat [1995 Supp (1) SCC 596].

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [(2003) 5 SCC 622]; State of Maharashtra v. B.E. Billimoria [(2003) 7 SCC 336]; and Dev Sharan v. State of U.P., [(2011) 4 SCC 769 : (2011) 2 SCC (Civ) 483].

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the LA action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/ instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the LA Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry



under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17 (1) does not necessarily result in exclusion of Section 5-A of the LA Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1) and (2) is not at all warranted in such matters."

[emphasis supplied.]

48. In Ram Dhari Jindal Memorial Trust v. Union of India reported in 2012 (4) SCALE 101, the acquisition of land by Delhi Development Authority to meet the shortage of housing accommodation in the city of Delhi, by invoking the urgency provision, came up for consideration and it is relevant to extract hereunder paragraphs 18 and 19:

"18. If the government seeks to invoke its power of urgency, it has to first form the opinion that the land for the stated public purpose is urgently needed. Such opinion has to be founded on the need for immediate possession of the land for carrying out the purpose for which land is sought to be compulsorily acquired. The use of power of urgency under Section 17(1) and (4) of the Act ipso facto does not result in elimination of enquiry under Section 5A and, therefore, if the government intends to eliminate enquiry, then it has to apply its mind on the aspect that urgency is of such



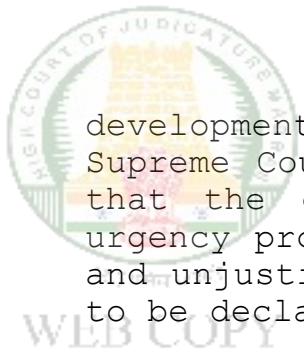
nature that necessitates elimination of such enquiry. The satisfaction of the government on twin aspects viz; (i) need for immediate possession of the land for carrying out the stated purpose and (ii) urgency is such that necessitates dispensation of enquiry is a must and permits no departure for a valid exercise of power under Section 17(1) and (4). (para 18)

19. Adverting now to the Notification dated October 27, 1999, the statement made therein is to the effect "the Lt. Governor, Delhi is satisfied also that provisions of sub-section (1) of Section 17 of the said Act are applicable to this land and is further pleased under sub-section (4) of the said Section to direct that all the provisions of Section 5A shall not apply". For what has been stated just above in immediately preceding paragraph, the exercise of power by the Lt. Governor, Delhi under Section 17(1) and (4) has to be held bad in law. Moreover, except the above statement in the Notification, there is no other material available on record which indicates that there has been application of mind by the Lt. Governor, Delhi on the aspect that urgency was of such nature that necessitated dispensation of enquiry under Section 5A of the Act. The respondents have miserably failed to show that the stated purpose 'Rohini Residential Scheme' could not have brooked the delay of few months and the conclusion of the enquiry under Section 5A of the Act would have frustrated the said public purpose. (para 19)"

The Honourable Supreme Court on going through the files has also recorded that the respondents miserably failed to show that the stated purpose 'Rohini Residential Scheme' could not have brooked the delay of few months and the conclusion of the enquiry under Section 5-A of the Act would have frustrated the said public purpose and in paragraph 20 of the said judgment, also observed that "the respondents have miserably failed to show to the satisfaction of the Court that power of urgency and dispensation of enquiry under Section 5-A has been exercised with justification."

49. In Garg Woollen Pvt. Ltd., v. State of U.P., reported in 2012 (6) SCALE 549, an invocation of urgency provision for acquisition of land for planned development of industrial area in District Dehradun through the agency of Uttar Pradesh State Industrial Development Corporation, came up for consideration and the Honourable Supreme Court after taking into consideration the earlier decisions including the decision in Radhy Shyam (Dead) through L.Rs., v. State of U.P., (cited supra) and held that the proposition Nos.(v) to (ix) of the said case are squarely attracted to the present case and the respondents failed to produce any material to show that the State Government had formed a bonafide opinion on the issue of invoking of the provisions contained in Section 17(1) and 17(4) of the Act.

50. In Bharat Sewak Samaj v. Lt. Governor reported in 2012 (9) SCALE 3, the acquisition of land by invoking the urgency provision for development of Mehrauli Heritage Zone under the planned



development of Delhi, came up for consideration and the Honourable Supreme Court once again referred to very many decisions and found that the decision of Lieutenant Governor, Delhi, to invoke the urgency provisions was ex facie illegal apart from wholly arbitrary and unjustified and held that the entire acquisition proceedings is to be declared as illegal and accordingly, quashed the same.

51. In *Laxman Lal v. State of Rajasthan* reported in (2013) 3 Supreme Court Cases 764, the acquisition of land for construction of a bus stand by invoking the urgency provisions, came up for consideration and after referring to the decision in *Anand Singh v. State of U.P.*, reported in (2010) 11 Supreme Court Cases 242, and also extracted paragraphs 43 to 48 as well as the decision in *Radhy Shyam v. State of U.P.*, reported in (2011) 5 Supreme Court Cases 553 and also dealt with the issue whether the pre-notification and post-notification delay would render the invocation of urgency power void and quashed the entire land acquisition proceedings.

52. Thus, the principles/ratio laid down in the above cited decisions would clearly emphasise that Section 17(1) read with Section 17(4) of the Act confers extraordinary power upon the State to acquire private property without complying with or dispensing with enquiry under Section 5-A of the Act and it could be done only when the purpose of acquisition cannot brook the delay of even few weeks or months, but the authorities concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A of the Act will in all probability, frustrate the public purpose for which land is proposed to be acquired.

53. In *Prabhawati and others v. State of Bihar* reported in (2014) 13 Supreme Court Cases 721, the Honourable Supreme Court, after laying down the said proposition, has also observed in paragraph 8, as follows:

"8. The question whether in a matter like the present one the State Government could invoke the urgency provisions contained in Section 17 of the Act is no longer res integra and must be treated as settled by the judgments of this Court in *Dev Sharan v. State of U.P.*, [(2011) 4 SCC 769]; *Radhy Shyam v. State of U.P.*, [(2011) 5 SCC 553]; and *Devender Kumar Tyagi v. State of U.P.*, [(2011) 9 SCC 164]. In *Radhy Shyam* case, the Court reviewed various judicial precedents and culled out the following principles:

"77. ...

<https://hcservices.ecourt.gov.in/hcservices/> acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but



that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition."

54. In the considered opinion of this Court, there is a delay on the part of the first respondent to invoke the urgency provisions for the acquisition of a portion of land belonging to the appellant/writ petitioner - society for setting up a Memorial for late Pasumpon Muthuramalinga Thevar.

55. Pasumpon Muthuramalinga Thevar was living in the premises bearing Door No.A-5 which now forms part of the school premises and breathed his last on 29.10.1963 and even according to the sixth respondent - Trust, which is espousing the said cause, representations and requisitions in this regard have been repeatedly made for over 40 years.

56. It is also not in dispute that the said portion of the superstructure is kept in tact by the appellant/writ petitioner - society, which purchased the land as early as in 1991 and every year, on the date of birth of late Pasumpon Muthuramalinga Thevar, a grand function is held and the school is also declared a holiday on that day.

57. It is also to be pointed out at this juncture that it is also the specific stand of the appellant/writ petitioner - society that in the event of acquisition of a portion of land, the school may not be in a position to function properly and effectively for the reason that the extent required for running the school would get reduced and thereby, it violates the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. It was also the stand of the appellant/writ petitioner - society that Section 34 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, imposed a restriction on alienation of property of the school and as per Section 31(1)(a) of the said Act, no property of a private school shall except with a previous permission in writing of the competent authority, be transferred by way of sale, exchange, mortgage, charge, pledge, lease, gift or in any other manner



whatsoever. The respondents did not produce enough materials before this Court as to the compliance of the said provisions.

58. It is also to be remembered at this juncture that the school is having classes from Kindergarten to 12th Standard and even in the year 2007, 1,372 students were studying and it caters to the needs of poor and downtrodden wards of people living in Thirunagar area.

59. There is also a delay of nearly eight months between Gazette notification dated 28.12.2005 and declaration under Section 6 of the Act, dated 30.08.2006. Even for the sake of argument that the invocation of the urgency provisions is justified, the Memorial is not going to come overnight or within short time.

60. As per 86th Amendment made to the Constitution of India, in the form of Article 21-A which came to effect on 01.04.2012, the Right of Education to the children studying from 6th Standard to 12th Standard, is declared as a fundamental right and it is also the specific case of the appellant/writ petitioner - society that classes 1 to 5 are located in the superstructure on the land which is the subject matter of acquisition and that the room in which Pasumpon Muthuramalinga Thevar breathed his last, is kept in tact and as already pointed out, every year, on the date of birth, the school itself celebrates and permitted the public to pay homage and respect to the great leader and for that purpose also, used to declare a holiday.

61. No doubt, as per the directions of this Court, the District Collector, Madurai District, made very many endeavours to find out an alternative land for the purpose of shifting the entire school and however, it did not fructify.

62. It is very pertinent to note at this juncture that in the birth place of Pasumpon Muthuramalinga Thevar, namely, Pasumpon, a Memorial already came into being and every year, on the birth day of the great leader, Government of Tamil Nadu itself is organising a function in a grand manner, wherein the leaders of political parties pay their respects.

63. This Court, after full and proper application of mind to the entire materials, is of the considered view that there is no justification for invoking the urgency provisions under Section 17 (1) read with Section 17(4) of the Act and thereby, dispensing with the enquiry under Section 5-A of the Act. Even otherwise, the room/superstructure in which, the great leader breathed his last, is kept in tact and as already pointed out, every year, on the date of birth, the school itself is declaring a holiday and organising a function, where the people are allowed to pay their respect and that apart, a Memorial is



already there in the birth place of the said great leader and every year, on his date of birth, the Government of Tamil Nadu is organising a function in a grand manner.

64. The right to elementary education is also declared as a fundamental right under Article 21-A of the Constitution of India by means of 86th Amendment which came into effect on 01.04.2012 and in the light of the specific stand taken by the appellant/writ petitioner - society that classes 1 to 5 are housed in the superstructure on the land which is the subject matter of acquisition and in the event of acquisition, the said superstructures have necessarily to be demolished and it has also to be shifted elsewhere.

65. No doubt, the acquisition of the said land also contravenes Section 31(1)(a) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and as such, the acquisition proceedings are liable to be quashed.

66. In the light of the findings rendered above, the appellant/writ petitioner - society is entitled to succeed in this writ appeal and Issue Nos.(iii) and (iv) are answered accordingly.

67. In the result, this writ appeal is allowed and the impugned order dated 10.07.2007 passed in W.P(MD)No.1480 of 2007 is set aside and consequently, the notification issued by the first respondent in Notification No.II(2)/IT/938/2005 under Section 4(1) of the Land Acquisition Act, 1894, published in the Tamil Nadu Government Gazette, dated 28.12.2005 and the notification issued by the second respondent published in the Tamil Nadu Government Gazette dated 22.02.2006 and the consequential declaration issued by the first respondent under Section 6 of the Land Acquisition Act, 1894, in Notification No.II(2)/ITM/453(b)/2006 published in the Tamil Nadu Government Gazette dated 30.08.2006 and the notification issued by the third respondent in his proceedings in Roc.No.59481/05/B4, dated 18.01.2007 published in the Madurai District Gazette Extraordinary, dated 20.01.2007, are quashed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar



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To

- 1.The Secretary,
State of Tamil Nadu,
Information and Tourism Department,
Kuralagam,
Chennai.
- 2.The Director/Additional Secretary to
the Government of Tamil Nadu,
Information and Tourism Department,
Chennai.
- 3.The District Collector,
Madurai District,
Madurai.
- 4.The Revenue Divisional Officer,
Madurai,
Madurai District.
- 5.The Tahsildar,
Madurai South,
Madurai District.

+1cc to M/s.K.Hemakarthikeyan, Advocate, SR.No.60394
+1cc to Mr.B.Saravanan, Advocate, SR.No.60280

rsb

RL/8C/24P/KK/SAR1/25/4/2018

JUDGMENT MADE IN
W.A.(MD)No.247 of 2007
and
M.P(MD)Nos.1 and 4 of 2007
and
C.M.P(MD)No.6291 of 2016