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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.04.2021

Judgment Pronounced on : 24.11.2021

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.9285 & 10135 of 2020

and

W.P.No.1708 of 2021

and

WMP.Nos.11318 to 11320, 12319, 12320, 12322, 12325, 12326 of 2020

and

WMP Nos.1865, 2184, 1911, 1913, 1917, 1919 & 1921 of 2021

1.J.Deepak Petitioner in WP.No.9285 of 2020
..... Petitioner in WP.No.1708 of 2021

2.Deepa Jayakumar Petitioner in WP.No.10135 of 2020

Vs

1. The Secretary to Government
Government of Tamil Nadu
Tamil Nadu Development and Information Department
St.George Fort, Chennai - 600 009.

..... 1st Respondent in WP.No.9285 of 2020

..... 1st Respondent in WP.No.1708 of 2021

2. The District Collector
Chennai Collectorate
'Singaravelan Maligai'
62, Rajaji Salai, Chennai - 600 001.

..... 2nd Respondent in WP.No.9285 of 2020

... 4th Respondent in WP.No.10135 of 2020

..... 2nd Respondent in WP.No.1708 of 2021

3. The Land Acquisition Officer
cum Revenue Divisional Officer
South Chennai Revenue Division
Guindy, Chennai - 600 032.

..... 3rd Respondent in WP.No.9285 of 2020

..... 5th Respondent in WP.No.10135 of 2020

..... 3rd Respondent in WP.No.1708 of 2021



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4. The Tahsildar
Mylapore Taluk
Mylapore, Chennai - 600 004.

.... 4th Respondent in WP.No.9285 of 2020

.... 4th Respondent in WP.No.1708 of 2021

5. The Chief Secretary to Government
State Government of Tamil Nadu
Secretariat, Fort St.George,
Chennai - 600 009.

.... 1st Respondent in WP.No.10135 of 2020

6. The Secretary to Government
Revenue Department
State Government of Tamil Nadu
Secretariat, Fort St.George
Chennai - 600 009.

.... 2nd Respondent in WP.No.10135 of 2020

7. The Secretary to Government
Public Works Department
State Government of Tamil Nadu
Secretariat, Fort St.George
Chennai - 600 009.

.... 3rd Respondent in WP.No.10135 of 2020

8. The Deputy Commissioner of Income Tax
Central Circle II (2)
New No.46, Old No.108, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.

.... 6th Respondent in WP.No.10135 of 2020

9. Puratchi Thalaivi Dr.J.Jayalalithaa Memorial Foundation
Rep. by its Chairperson
St.George Fort, Chennai - 600 009.

.... 5th Respondent in WP.No.1708 of 2021

Prayer in W.P.No.9285 of 2020 : Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned land acquisition proceedings initiated on the basis of G.O.No.180 dated 05.10.2017 of the 1st respondent and subsequent preliminary Notice No.A1/3476/2018 Form-IV dated 25.06.2019, Notice A1/3496/2018 Form-V dated 28.06.2019, Notice No.01, A1/3476/2017 Form-VI dated 04.5.2020, and Public Notices in Rc.A1/3476/2018 dated 19.05.2020 under the provisions of RFCTLARR Act / Rules by the respondents 2 and 3, and quash the same as the same is perverse, arbitrary, biased, illegal, untenable, smacks of malafide and colourable exercise of powers



and consequently direct the respondents to consider the petitioner's objections dated 29.12.2018, 06.07.2019, 07.05.2020, 01.06.2020 and 01.07.2020 thereby to drop the entire land acquisition proceedings from converting the residential house "Veda Nilayam" bearing Old Door No.36, New Door No.79, Present Door No.81, Poes Garden, Chennai-600 086 into a memorial.

Prayer in W.P.No.10135 of 2020 : Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the land acquisition proceedings initiated pursuant to the GO.No.180, dated 05.10.2017 followed by the preliminary notice No.A1/3476/2018, dated 25/6/2019, Notice A1/3496/2018, dated 28/06/2019 the declaration under Section 19, dated 4/5/2020 and the Award passed by the 5th respondent in Award No.01 in RC.No.A1/3476/2018 dated 22/7/2020, quash the same and consequently direct the respondents to deliver the possession of Veda Nilayam along with movable to the petitioner. (Prayer amended Vide Order dated 01.04.2021 in WMP.No.1984 of 2021]

Prayer in W.P.No.1708 of 2021 : Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent and quash the impugned Award No.01/2020 made in R.C.No.A1/3476/2018 dated 22.07.2020 on the file of the 3rd respondent as the same is perverse, arbitrary, biased, illegal, untenable, smacks of malafide and colourable exercise of powers and consequentially to cancel the entire land acquisition proceedings from converting the residential house "Veda Nilayam" into a Memorial and further direct the respondents to handover the possession of the house bearing Old Door No.36, Present Door No.81, "Veda Nilayam" Poes Garden, Chennai-600 086.

For Petitioner : Mr.S.L.Sudarsanam
[in WP.No.9285 of 2020 & WP.1708 of 2021]

Mr.K.V.Sundararajan
[in WP.No.10135 of 2020]

For Respondents: Mr.Vijay Narayan, Advocate General
Assisted by Mr.V.Jayaprakash Narayan
State Government Pleader

Mr.S.R.Rajagopal, Addl. Advocate General
Assisted by Mr.E.Manoharan, Spl Govt Pleader

[Respondents 1 to 4 in WP.No.9285 of 2020]
[Respondents 1 to 5 in WP.No.10135 of 2020]
[Respondents 1 to 4 in WP.No.1708 of 2021]



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Mr.T.R.Senthil Kumar
Senior Standing Counsel for Income Tax Dept.,
Assisted by Ms.K.Usha Rani
Jr.Standing Counsel for Income Tax Dept.,
[Respondent 6 in W.P.No.10135 of 2020]

COMMON ORDER

Introductory Statement:

1.1 'Veda Nilayam' was acquired. It was the residence of Selvi J. Jayalalithaa, the former Chief Minister of Tamil Nadu. She owned it. Ms. Jayalalithaa died on 05-12-2016. Subsequently, her house was acquired by the Government under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act., 2013 (RFCTLARR Act) with a view to convert it into a memorial for her.

1.2 Ms. Jayalithaa was a spinster and she died intestate. The petitioners herein, Shri. Deepak and Smt.Deepa (henceforth Deepak and Deepa), respectively are her nephew and niece (children of Ms. Jayalalithaa's pre-deceased brother Jayakumar), and are the successors-in-title to Ms. Jayalalithaa's estate. They challenge the acquisition of 'Veda Nilayam' in these writ petitions.

2. To facilitate a focused analysis, this Order is divided into Section-A and Section-B. In Section A, this Court proposes to deal with Facts & Pleadings. In Section B, the arguments of the counsel on either side and the discussion and decision of the Court are dealt with.

SECTION-A

FACTS & PLEADINGS

FACTS:

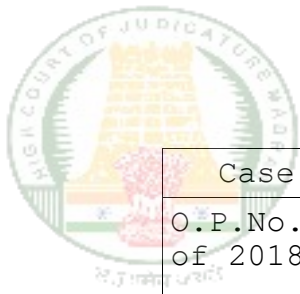
3. There are two sets of facts: (a) Facts relating to a certain proceedings for obtaining Letters of Administration (hereinafter would be termed as LoA) that Deepak has filed; and (b) Facts pertaining to acquisition of 'Veda Nilayam'. In normal circumstances the former (that which relates to LoA) may not have merited anything more than a passing reference in a proceeding challenging the acquisition based on title. However, it has assumed considerable significance, thanks to the defense-strategy of the respondents.



Proceedings for grant of LoA:

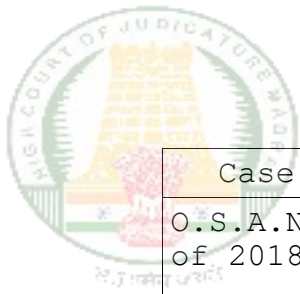
4. The facts here are:

- ◆ On 16-08-2017, Deepak (the petitioner in W.P.Nos.9285 of 2020 and WP.No.1708 of 2021) had approached the Tahsildar, Mylapore Taluk, for obtaining a legal heir certificate to the effect that he and Deepa are the heirs of Ms. Jayalalitha. This was forwarded to Tahasildar, Guindy, who vide his proceedings dated 22.09.2017, refused to grant it and required Deepak to approach the Court.
- ◆ Meanwhile, on 09-10-2017, a certain K.Pugazhenthithi and P.Janakiraman had filed a O.P. D.No.35654 of 2017 for issuance of Letter of Administration. They claimed themselves to as members of AIADMK, the political party whose affairs Ms. Jayalalithaa had presided.
- ◆ Deepak on his part has approached this Court in O.P.No.630 of 2018 for obtaining LoA, in which, his sister, Deepa (petitioner in WP.No.10135 of 2020) was arrayed as a respondent. Deepa filed an affidavit before the Court consenting to the issuance of LoA in the name of Deepak and herself.
- ◆ On 09.08.2018, a learned Single Judge of this Court passed an order rejecting Pugazhenthithi and Janakiraman's right to maintain a petition for obtaining a LoA. Challenging this Order in O.P.D.No.35654 of 2017, Pugazhenthithi and Janakiraman preferred an intra court appeal in O.S.A.No.445 of 2018, before a Division Bench of this Court. This appeal laid only against the Administrator General of Tamil Nadu. The Division Bench however, suo moto directed the impleadment of Deepa and Deepak, in the appeal before it. The Bench also withdrew O.P.630 of 2018 that was pending adjudication before the learned Single Judge to its file.
- ◆ On 27-05-2020, the Division Bench pronounced separate orders in O.P.630 of 2018 and OSA 445 of 2018. This Court allowed the petition in O.P.No.630 of 2018 and declared the petitioners herein as heirs of Ms.Jayalalithaa, but disposed the appeal preferred by Pugazhenthithi and Jayaraman. The operative portion of these Orders are extracted:



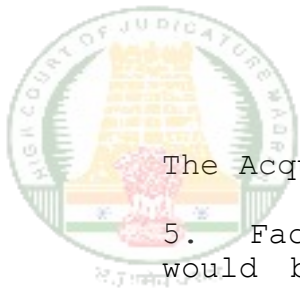
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Case No.	Operative portion
O.P.No.630 of 2018	(1)The petitioner Mr.J.Deepak and the respondent Ms.J.Deepa are the class-II legal heirs (****) of late Chief Minister Dr.J.Jayalalithaa, being the son and the daughter of the late Chief Minister Dr.J.Jayalalithaa's brother Late J.Jayakumar (2)The petitioner and the respondent are entitled to the Letters of Administration in respect of the estate held individually by the Chief Minister Dr.J.Jayalalithaa or in the names of the firms or companies and the credits of the deceased J.Jayalalithaa, as mentioned in the Affidavit of valuation filed by the petitioner viz., Ex.P10 (3)The petitioner and the respondent shall allot a few properties, according to their discretion and create a registered Public Trust in the name of their late aunt Dr.J.Jayalalithaa" for the purpose of doing public and social service as per their affidavits filed before this Court within a period of eight weeks from the date of receipt of a copy of this order.



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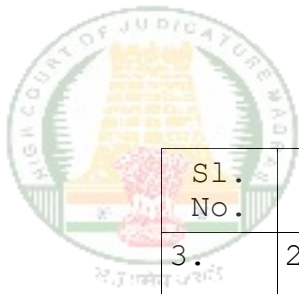
Case No.	Operative portion
O.S.A.No.445 of 2018	36. While confirming the order of the learned Single Judge rejecting original petition filed by the appellants at SR stage itself, this Court suo moto invoking Article 226 and Section 151 of CPC, passes the following order : (a)The State Government shall consider and decide the suggestion of this Court to avoid making Poes Garden property ' VEDA NILAYAM' as ' memorial' by acquiring the property, as it would incur huge expenses to the public exchequer. (b)The State Government shall consider the suggestion that Poes Garden property 'VEDA NILAYAM' be made as ' Official Residence-cum-Office of the Chief Minister of the State', after acquiring the property as per law, after issuing notice and hearing the second and third respondents viz., J.Deepa and J.Deepak. (c)The State Government may consider the suggestion of this Court to convert a portion of the property as 'memorial' in the memory of late Chief Minister J.Jayalalitha and rest of the property as 'Official Residence-cum-Office of the Chief Minister of the State'. (d)There shall be a direction to the State to provide round the clock security to the second and third respondents viz., Mrs.J.Deepa and Mr.J.Deepak forthwith at their cost. (e)The legal heirs viz., the second and third respondents are directed to liquidate any one of the proeptries of deceased J.Jayalalithaa and deposit the amount in a fixed deposit in any one of the nationalised bank and pay for expenses incurred towards security to be provided by the State, as per this order.
(****) This Court, Vide order dated 29.05.2020 in O.P.No.630 of 2018 and O.S.A.No.445 of 2018 had clarified that the petitioners herein (Deepak & Deepa) are the legal heirs of Late Former Chief Minister Dr.J.Jayalalitha as per Section 15(2)(a) and Section 15(1)(d) of the Hindu Succession Act and are entitled to succeed to her estate. Hence 'Class-II' of 'II Class' found in the order dated 27.05.2020 stands deleted.	



The Acquisition Proceedings:

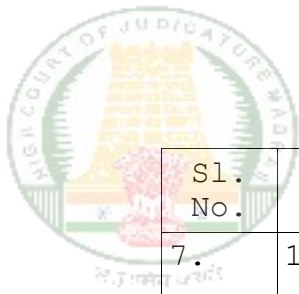
5. Facts pertaining to acquisition are not disputed. And, as would be seen later, their relevance in the context of the arguments advanced and the decision arrived is also minimal. Secondly, the pleadings too are slightly scattered, and hence they are grouped after a conjoint reading of the affidavits filed on either side, and the typed set of papers that both have filed. As most of the facts so disclosed do not impact the critical issues to be considered by this Court in the later stage of this order, they are tabulated as under for convenience:

Sl. No.	Date	What happened	How the petitioners responded
1.	17.08.2017	Hon'ble Chief Minister of Tamil Nadu announced on the floor of the Assembly about the acquisition and conversion of residence of late Former Chief Minister of Tamil Nadu Selvi.J.Jayalalithaa into a Memorial in her honour There a press release to that effect on 18-08-2017.	(1) 22.08.2017 : Deepa makes a representation to the Chief Secretary to drop the acquisition. (2) 21.09.2017: As there was no response, Deepa approaches the Court with W.P.No.26286/2017. In the affidavit, she alleges that the Chief Minister has no locus standi to make a statement about converting a private property, of which she is the owner, and sought a direction to dispose of her representation dated 22.08.2017.
2.	05.10.2017	G.O.No.180 issued by the 1 st respondent granting administrative sanction for the conversion of 'Veda Nilayam' Poes Garden, Chennai as Government Memorial passed.	



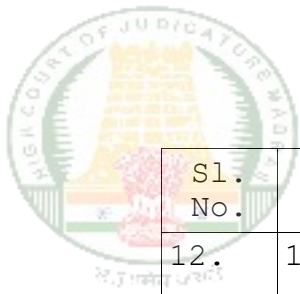
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Sl. No.	Date	What happened	How the petitioners responded
3.	23.10.2017	Order passed in W.P.No.26286/2017 by the Hon'ble High Court directing the Chief Secretary to Government to consider the representation of Ms.J.Deepa dated 22-08-2017 (referred to above).	
4.	27.10.2017	Government Letter requesting Deepa to appear before the Chief Secretary for enquiry on 07.11.2017 and subsequent days.	Deepa did not initially responded to the notices, but finally appeared on 11-12-2017.
5.	10.11.2017	Correspondence between the Secretary, Tamil Development and Information (Memorials Department), Chennai - requiring the District Collector, Chennai, to acquire 'Veda Nilayam' under RFCTLARR (Vide Form-I of the Act)	
6.	15.11.2017	Proceedings of the District Collector, Chennai, delegates his power to the Revenue Divisional Officer, Egmore Division, Chennai as the Land Acquisition Officer for the Project "Memorial for former Chief Minister of Tamil Nadu late Ms.J.Jayalalithaa".	



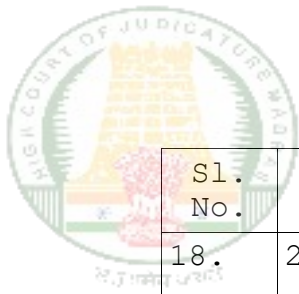
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Sl. No.	Date	What happened	How the petitioners responded
7.	11.12.2017	Constitution of Committee under Rule 4 (1) (a) of the RFCTLARR (Compensation, Rehabilitation & Resettlement and Development Rules, 2015 (hereinafter CRRDP Rules and to submit a report under Rule 4 (1) (b)).	
8.	19.12.2017	The Chief Secretary to the Government of Tamil Nadu disposed of the representation of Deepa in terms of the directions given in W.P.26286 of 2017, and has held that Deepa's request to drop the acquisition was not feasible for compliance.	
9.	30.12.2017 17.01.2018	Inspection of land and building situated in the said premises by the Committee constituted under Rule 4-1(a) of the TNRFCTLARR (CRRDP) Rules, 2015.	
10.	22.11.2018	Appointment of Dr. A. Enoch as the Social Impact Assessment Agency (hereinafter SIA)	
11.	27.11.2018	Notification published for conducting Social Impact Assessment under Section 4(1) of the Act and under Rule 6 of the TNRFCTLARR (SIAC) Rules, 2014.	



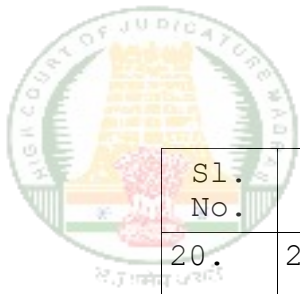
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Sl. No.	Date	What happened	How the petitioners responded
12.	14.12.2018	Draft SIA Report by the SIA Agency submitted.	
13.	18.12.2018	Publication of SIA Report and issuance of notice for public hearing published.	
14.	29.12.2018		Objections raised by Deepak. He alleges that he and Deepa are Class-II heirs of J.Jayalalithaa, that OP.No.630 of 2018 for Letters of Administration is pending and no decision shall be taken.
15.	02.01.2019	Public Hearing conducted by the Collector.	
16.	07.01.2019	Expert Committee constituted under Section 7(2) of RFCTLARR Act.	
17.	21.03.2019	Final SIA Report submitted by the SIA Agency after considering the objections and claims filed.	



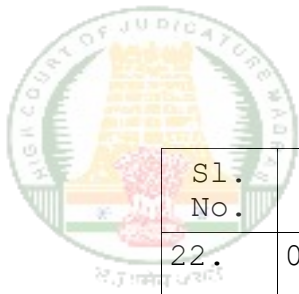
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Sl. No.	Date	What happened	How the petitioners responded
18.	27.03.2019	Publication of the Expert Committee report by the Expert Committee constituted by the Collector under Section 7(1), (2) and (3) of the Act The Committee accepts the findings of the SIA Agency (Dr. Enoch) that there is no necessity to prepare Social Impact Management Plan for the displaced/relocate families& relative ameliorative measures as there is no displacement of any families. It also holds that there is no need for EIA study.	
19.	21.06.2019	District Collector published his final conclusions and published the same in English and Tamil along with final SIA Report in the locality, Collectorate, and in the official website of the District Collector Office.	



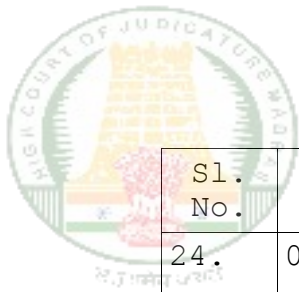
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Sl. No.	Date	What happened	How the petitioners responded
20.	25.06.2019	Gazette Publication of Preliminary notification for Land Acquisition under Sec.11(1) of the RFCTLARR Act read with Rule 13 (1) of the TN-RFCTLARR Rules, 2017 in Form IV In the 8th column, it is mentioned that the heirs of registered owner of J.Jayalalithaa is yet to be ascertained.	06.07.2019 : Deepak objects. Reiterates he is the class-II heir, refers to Orders passed in WP.No.26286/2017 and claims that the issue sub-judice in O.P.No.630/2018. Deepa did not file any objection.
21.	28.06.2019	Newspaper Publication in Dinathanthi & The New Indian Express about the preliminary notification under Section 11(1) of the Act. As in the Gazette publication, in 8th column, it is mentioned that the heirs of the registered owner of J.Jayalalithaa is 'yet to be ascertained.'	



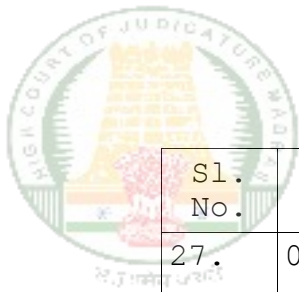
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Sl. No.	Date	What happened	How the petitioners responded
22.	05.07.2019	Notification under Sec.11(5) of the Act, read with Rule 14(1) of the TN-RFCTLARR Rules, 2015 in Form V by the LAO/RDO, inviting objection from the persons interested. In column 5 meant for noting the Name and Address of the Person interested/Registered holder, it is noted: J. Jayalalithaa, notwithstanding the fact that Miss. Jayalalithaa had died.	
23.	19.08.2019 22.08.2019	Notice by the LAO/RDO, Chennai for enquiry firstly to Deepak and then to his counsel Thiru. Senthamilselvan for an enquiry under Sec.15(2)	22-08-2019: Objection filed by the Counsel of Deepa that she along with Deepak are Class II heirs of Ms. Jayalalithaa and that the matter is sub-judice in OSA 445/2018, and requests not to proceed further with the acquisition. 03-09-2019: Objection by counsel of Deepak to notice under Form IV and Form V. Request for adjournment of proceedings of LAO/RDO till the outcome of the OP.No.630/2018.



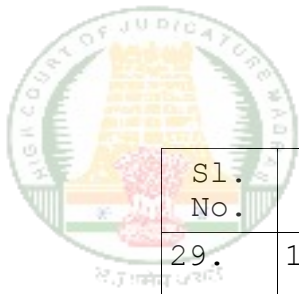
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Sl. No.	Date	What happened	How the petitioners responded
24.	09.09.2019	Proceedings of the LAO/RDO, rejecting the objections of Deepak and Deepa on the ground that acquisition is a policy decision of the Government.	
25.	22.01.2020	Proceedings of the Collector accepting the Report of the RDO/LAO dated 09-09-2019 and rejecting objections under Sec.15(3) of the RFCTLARR Act.	
26.	03.02.2020	Decision by the Collector under Sec.19 (1) of the RFCTLARR Act that the proposed acquisition serves public purpose, that no interested persons are likely to be affected and that there is no Rehabilitation and Resettlement required. Further, direction passed to the LAO/RDO to publish declaration under Section 19 (2) of the Act. Along with the proceedings is appended a Form similar to Form V. Here again, in the relevant column intended for notice the name of the person interested, it is noted that legal heir to be ascertained.	



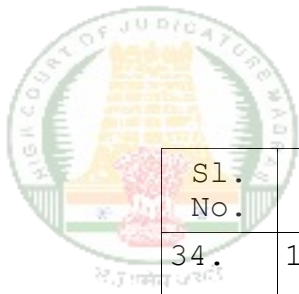
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Sl. No.	Date	What happened	How the petitioners responded
27.	04.05.2020	G.O.(Pt) No.54, TD&I (M) Department passed to publish declaration under Section 19(1) and (2) of the Act in Form VI of the TN-RFCTLARR Rules, 2015. As has been hitherto done, in the relevant column intended for notice the name of the person interested, it is noted that legal heir to be ascertained.	
28.	06.05.2020	Notification published by the District Collector under Section 19(1) of the Act in Form VI.	On 07.05.2020, Deepak files a detailed objection wherein he narrates his emotional attachment to 'Veda Nilayam' and inter alia claims: • That he and Deepa are class II heirs; • That acquisition for memorial will not fall within the definition of public purpose under Sec.2(1) of the RFCTLARR Act. • That SIA study is not correct. • OSA 445/2018 & O.P.630/2018 are reserved for orders. Hence declarations made are improper.



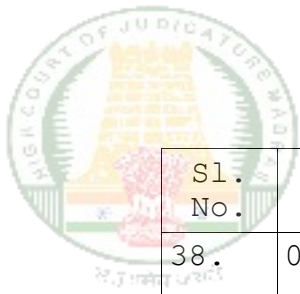
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Sl. No.	Date	What happened	How the petitioners responded
29.	19.05.2020	Public Notice under Section 21(1) of the Act published calling for representation for persons interested for an award enquiry. Addressed (for the first time) to Deepa and Deepak.	
30.	22.05.2020	Tamil Nadu Acts and Ordinances No.3/2020 passed- for a long term administration of the intended memorial.	
31.	26.05.2020	G.O.(Ms) No.55 - Government Order sanctioning a sum of RS.67,16,61,225/- as Tentative Compensation Amount for Veda Nilayam, in pursuance to the proceedings of the District Collector dated 26.08.2019, claiming compensation amount at Rs.76,66,90,363/-.	
32.	27.05.2020 & 29.05.2020 : Order of this Court in OP.No.630 of 2018 and OSA.No.445 of 2018, declaring Deepa and Deepak as the legal heirs of late former Chief Minister Selvi.J.Jayalalithaa		
33.	01.06.2020		Letter by by Deepak - citing the orders of the Division Bench required permission to visit Veda Nilayam to ascertain the inventory of moveables in Veda Nilayam.



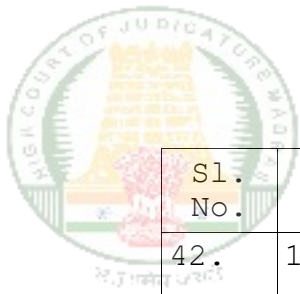
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34.	12.06.2020		Deepa addresses the Chief Secretary and the other officials connected with the acquisition of Veda Nilayam that she is the Class-II heir, traces the history of Veda Nilayam and her interest in the property, introduce the case in OP.No.630 of 2018 & OSA.445 of 2018, and narrates the entire consequences and events from the Chief Secretary statement to constitute Veda Nilayam into a memorial.
35.	24.06.2020	Letter of the LAO to the District Collector regarding the fixation of compensation amount & award proposals.	
36.	29.06.2020	Letter from the Income Tax Department (6 th respondent in W.P.10135/2020) to the LAO, requiring the latter to discharge the tax liabilities of late Miss. Jayalalithaa.	
37.	01.07.2020		Deepak's representation to LAO/RDO, to drop acquisition. In view of the observation of the Division Bench in its OSA.No.445 of 2018 that it would involve huge expenses to the public exchequer .



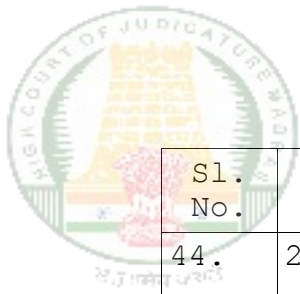
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38.	03.07.2020		Objection by Deepa that acquisition proceedings is faulty as no notices were issued at any stage, that it should not have been undertaken without ascertaining who the heirs of Miss. Jayalalithaa are.
39.	03.07.2020	Communication of the claim of the Income Tax Department and the objections of Deepak and Deepa, respectively dated 01-07-2020 and 03-07-2020 by LAO/RDO to the District Collector.	
40.	07.07.2020	Report/Remarks of the District Collector justifying constitution of a memorial - speaks of the welfare scheme introduced by late Jayalalithaa during her term as the CM of the State.	
41.	09.07.2020		Deepak filed W.P.No.9285 of 2020.



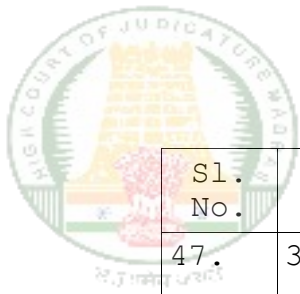
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Sl. No.	Date	What happened	How the petitioners responded
42.	15.07.2020		Order of this Court dismissing WP.No.9229 of 2020 filed by Poes Garden and Kasthuri Estate House Owners Association, to quash the G.O. granting administrative sanction for the memorial and also the preliminary notification of acquisition of Veda Nilayam to final declaration of public purpose for acquisition.
43.	16.07.2020		Deepak wrote a letter to District Collector not to proceed with the proceedings of the land acquisition, as the Orders of this Court is awaited in WP.No.9285/2020 & OSA.No.445 of 2018 Deepa wrote a letter to the District Collector requesting to grant her permission to take inventory of the movable assets & to conduct inspection regarding measurement and valuation of Vedha Nilayam.



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Sl. No.	Date	What happened	How the petitioners responded
44.	21.07.2020	Letter from the Secretary of Tamil Development and Information (Memorials) Department to the Advocate General, requiring him to inform this Court about the decision taken by the Government in converting the Veda Nilayam to a Government Memorial.	
45.	22.07.2020	Award passed by the LAO/RDO Vide Award No.01/2020 in R.C.No.A1/3746/2018. Since there was conflicting claims over the compensation amount and there was no claim for apportionment of compensation from interested persons, claims referred under Section 76 and 77(2) of the Act to the Principal District Judge, City Civil Court, Chennai and entire compensation deposited therein. Letter to the City Civil Court by the LAO regarding deposit of compensation amount.	On 25.07.2020, Deepak made a representation to the District Collector & LAO not to deposit the award amount in City Civil Court.
46.	23.07.2020		Legal notice sent by Deepak to the respondents seeking permission to take inventory and to conduct inspection at Veda Nilayam.



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Sl. No.	Date	What happened	How the petitioners responded
47.	31.07.2020		Deepa filed a petition in WP.No.10135/2020 before this Court to quash the Award No.1/2020. Thereafter, the prayer in WP.No.10135/2020 was amended Vide Order dated 01.04.2021 in WMP.No.1984 of 2021.
48.	11.09.2020		Deepak made a representation to the Chief Minister requesting not to table the Bill as regards Ordinance No.3 / 2020 during the Assembly Session to take place on 14.09.220 & 16.09.2020.
49.	19.10.2020	Enactment of the Tamil Nadu Puratchi Thalaivi Dr.J.Jayalalithaa Memorial Foundation Act, 2020 TN Acts and Ordinances Act No.32/2020.	
50.	25.01.2021		Deepak filed a petition in WP.No.1708 of 2021 to quash the Award No.01/2020 dated 22.07.2020 and to cancel the acquisition proceedings.
51.	27.01.2021	Interim order passed by this Court permitting inauguration of the memorial on 28.01.2021.	

Pleadings:

Petitioners' case:

6. In the backdrop of the consolidated facts as are tabulated above, the core-contention of the petitioners as supporting their cause of action, may now be stated:



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- At no point of time, the Government gave the petitioners any opportunity to present their version to the intended conversion of Veda Nilayam into a memorial for Ms. Jayalalithaa.
- Acquiring a property for converting it into a memorial does not fall within the meaning of 'public purpose' as defined in Section 2 of RFCTLARR Act.
- During the pendency of OP.No.630 of 2018 and O.S.A.No.445 of 2018 before the Division Bench, Deepak had requested the Land Acquisition Officer, vide his communication dated 03.09.2019, to postpone the enquiry, till the orders were passed in the above cases.
- While so, without waiting for the orders, the Land Acquisition Officer had issued a public declaration dated 06.05.2020 under Section 19 of the RFCTLARR Act. As per this declaration, the Government has made a statement that the ownership of the property is yet to be ascertained. This is not consistent with the Act.
- Later, the Government has come out with a memorial for Dr.J.Jayalalithaa at the place of her burial at considerable expenses to the public exchequer and hence converting her house into another memorial cannot be justified.
- The Social Impact Assessment (SIA) has not been properly done and the Government has given a go by to Section 4(4) (f) of the RFCTLARR Act and avoided exploring the possibility of an alternate site for acquiring the property. The SIA report had not considered the feasibility of an alternate place. It has given a go by to the Environmental Impact Study, which is mandatory under Section 4(4) of the Act. The SIA report is a vacuous document filed without proper application of mind. The procedure adopted for acquiring the property violates due process of law. At no time, have the respondents respected the doctrine of principle of natural justice.
- Challenging the acquisition the Poes Garden & Kasthuri Estate Owners Association instituted W.P.No.9229 of 2020 before this Court, seeking to quash the entire land acquisition proceeding. This came to be disposed of by this Court on 15.07.2020, recording the statement of the learned Additional Advocate General that the acquisition proceedings have not culminated into any final orders, and also recorded the statement of the learned Additional Advocate General that the Government is actively considering the suggestions made by the Division Bench of this Court in OSA 445 of 2018.
- The Award No.1/2020 was hurriedly passed by the third respondent vide his proceedings dated 22.07.2020. Indeed, the award was passed even before the Government had taken a decision on the matter as per the directions of the



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Division Bench passed in O.S.No.448/2015. Consequently, the award passed suffers from manifest perversity as it is against the violation of the principles of natural justice.

- The Land Acquisition Officer approached the issue without understanding the spirit behind the RFCTLARR Act. This apart, as per the Rule 18(4) of the Tamil Nadu RFCTLARR Rules, 2017, if the compensation amount is more than Rs.8.0 crores, then the award must be passed only by the Collector.
- Both the petitioners were not given an opportunity to participate in the land acquisition proceedings, though they have been declared as the heirs of Dr.J.Jayalalithaa, former Chief Minister of Tamil Nadu.
- The Government have invoked Section 16 of the Act, during the pendency of W.P.No.9229 of 2020. On 22.05.2020, an ordinance was promulgated, which later culminated into a legislation on 19.10.2020, for taking control of the movables and other valuables in Veda Nilayam. The entire process totally ignored the petitioners herein, who are heirs of late Dr.J.Jayalalithaa, former Chief Minister of Tamil Nadu.
- The entire proceedings picked up a momentum from May, 2020, when the country was in a total lock down during the first wave of COVID-19. It is in this setting, the ordinance too was passed on 22.05.2020.

(b) Counter of the Respondents:

7.1 For the respondents-State, at least three counters are filed. The Income Tax Department which is arrayed as the 6th respondent in W.P.10135/2020 has filed its separate counter. Before detailing the line of defenses taken by them, it will be appropriate to list how the official respondents positioned themselves:

Case No.	Counter filed by	Counter filed for whom
WP.9285/2020	District Collector (R2)	District Collector
WP.No.10135/2020	Land Acquisition Officer/ Revenue Divisional Officer (R5)	District Collector and Revenue Divisional Officer (R4 & R5)
WP.No.1708/2021	District Collector (R2)	Tamil Development and Information Department and Land Acquisition Officer/Revenue Divisional Officer (R1 & R3)

In other words, the District Collector, Chennai had taken the responsibility of defending the two petitions that Mr.J.Deepak



had filed, whereas the Land Acquisition Officer/Revenue Divisional Officer took the responsibility to file counter affidavit to WP.No.10135/2020, filed by Mrs.J.Deepa, even though the District Collector, Chennai was arrayed as the fourth respondent.

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7.2 All the counters filed either by the District Collector / Land Acquisition Officer, as the case may be, broadly narrate the various procedural facts that were followed by the Government from the stage of Hon'ble Chief Minister's statement on the Floor of the House to convert 'Veda Nilayam' into a memorial till passing of the award. (These facts are already stated succinctly in the tabulation in Paragraph 5 above). The material facts of defense raised in the counters are bullet-pointed as below :

- The petitions are not maintainable in view of the Orders passed in OSA.No.445 of 2018, and non-compliance of certain directions by the petitioners, in terms of LoA granted to them in OP.No.630 of 2018.
- The petitioners herein are not the owners of the property. They only fall under the category of 'persons interested' within the meaning of Section 3(x) of the RFCTLARR Act.
- That a memorial will fall within the inclusive definition of "public purpose" under Sec.2(1) of the RFCTLARR Act. To support it, reference was made to several authorities (all of which are later relied on by the learned Advocate General in his arguments).
- The central theme to the public purpose for acquisition is explained in the counter of the District Collector, the 2nd respondent in W.P.No.9285 of 2020, and it is relevant to extract the following paragraphs :

"19. The late Hon'ble Chief Minister, being a leader who lived for the welfare of the public, would have most definitely appreciated and welcomed the steps taken by the Government to convert the residence to a Memorial to serve as a symbol of motivation, especially to girls/women and to inspire them to achieve their goals against all odds. It is submitted that the petitioner who was not publicly seen or even associated with late Hon'ble Chief Minister, when she was alive and had faced various challenges/adversities, both political and personal, is now claiming proximity/familiarity with her purely for the sake of retaining the properties.

23. The Hon'ble Chief Minister was a



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leader of National and Global fame and conversion of her residence to a memorial would not only be a matter of pride and motivation to the people of this State but the same would also promote tourism industry by attracting visitors as it is common that tourist who visit other Countries/States would always visit such memorials and the memorials become places of tourism importance.

29(d). In continuation to the above, it is submitted that considering the history and achievements by the former Chief Minister Selvi.J.Jayalalithaa, a conscious decision was taken to convert 'Veda Nilayam' into a memorial to showcase her contribution to the society and to highlight the fact that the former Chief Minister considered the people of Tamil Nadu as only family and worked tirelessly for their interest and welfare. Hence, the Government of Tamil Nadu decided to convert the residence of former Chief Minister Selvi.J.Jayalalithaa into a memorial. Further, it is submitted that conversion of residences of popular leader into Government Memorial is not a new phenomenon, it is worldwide practice that respective Governments construct memorials to preserve the late leader's memory in the minds of public, not only for their country's citizens and also for the other country citizens to know the achievements of great leaders."

- For the purpose of establishing a foundation for making long-term arrangements for conversion of 'Veda Nilayam' into a memorial, the Tamil Nadu Legislative Assembly has passed the Tamil Nadu Puratchi Thalaivi Dr.J.Jayalalithaa Memorial Foundation Act, 2020, for upkeep and management thereof, and for matters incidentally thereto. This Act had come into force retrospectively from 22.05.2020.
- Right through, the petitioners have been only requesting to drop the acquisition, but this has been considered by the Chief Secretary, pursuant to the Orders of this Court in WP.No.26286/2017 dated 22.10.2017. At the earliest instance, he has rejected it as not feasible of compliance and this Order was not challenged.
- That the petitioners were given due opportunity to participate in the enquiry at every stage of the acquisition, and therefore they cannot question it. Having granted absolute opportunity at all stages, the petitioners cannot claim that they have been denied



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- opportunity.
- That there is no need for any rehabilitation and resettlement package as the petitioners were not displaced by the acquisition. Neither of the petitioners have been residents of 'Veda Nilayam' in the last few decades. It is neither their place of residence nor is their livelihood dependent on the same.
 - Veda Nilayam has been acquired to convert it into a memorial to attract public and tourists. It is being preserved to depict the life and times of the late former Hon'ble Chief Minister of Tamil Nadu, for which the State legislature has enacted Act No.32/2020 for transfer and maintenance of the movables and other valuables inside the premises to the care of the Government. The inventory of the articles, movables etc., in Veda Nilayam too have been prepared.
 - Intervention of COVID-pandemic has little relevance, since it was the continuation of the process of acquisition commenced earlier to the onset of pandemic and at no stage, the petitioners can be stated to have been prejudiced and thereby, since they were heard at all times.
 - The petitioners' core-contention to oppose acquisition was emotional and sentimental, neither of which merit consideration when there is a public purpose for acquisition.
 - No prejudice would be caused to the petitioners, nor their rights would be prejudiced in any manner by the opening of the memorial.
 - The award has been passed legally, and since there was a claim for apportionment of compensation by the interested persons, the compensation amount of Rs.67,90,52,033/- was deposited before the Principal District Judge, City Civil Court, Chennai.

7 .3 In the counter affidavit of the Deputy Commissioner of Income Tax, the 6th respondent in WP.No.10135 of 2020, he only claim that as on 31.01.2021, the tax arrears to the tune of Rs.37,54,61,691/- is due from late Selvi.J.Jayalalithaa and that has to be first settled to the Department.

SECTION B

Preliminary Statement:

8.1 In this section the arguments, discussion on the arguments and the conclusion arrived by the Court are dealt with. The entire arguments and the discussion thereon are divided into three parts:



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- Part I deals with the maintainability issue raised by the Government.
- In Part II, this Court considers if the acquisition of Veda Nilayam involves a 'public purpose' within the meaning of RFCTLARR Act, and if the exercise of the power of acquisition is tainted by a colourable exercise of the power of eminent domain.
- In Part III allegations of procedural lapses are discussed.

8.2 Few preliminary aspects may have to be stated here:

- The pleadings of the petitioners do not support the gamut of arguments that they later constructed. This is also reasonably matched by the respondents. What is however significant here is that both sides advanced arguments, knowing full well the case of the rival, with necessary copies of documents and also authorities to back them. When facts, documents and arguments are available before the Court, it may not matter if a line of legal argument is not adequately projected in the pleadings. After all, pleadings are intended to provide procedural fairness, and when parties are appraised of the issues involved lack of clarity in pleadings becomes inconsequential.
- This Court is aware that in this case, it is dealing with an issue involving the working of public law, and in the process it has also spotted a facet in it that possesses the complexion of a fundamental right. Therefore, it becomes obligatory on the Court to test the Executive actions on a broader plane of Constitutional and administrative law, and not to confine itself to a meticulous analysis of the pleadings as if it were a civil suit.

8.3 The learned Advocate General and the Additional Advocate General have shared their responsibility in defending the action. While Shri. S.R.Rajagopal, the learned Additional Advocate General argued Part-I on the maintainability of the writ petitions, the other two parts were argued by Shri. R.Vijaynarayanan, the learned Advocate General.

PART I: MAINTAINABILITY

Arguments of the Respondents:

9. Thiru.S.R.Rajagopal, the learned Additional Advocate General presented the grounds of challenge to the maintainability of the writ petitions. His arguments are summed up thus:



● Both Deepa and Deepak assert in their respective affidavits that they derive their title to litigate only under the Letters of Administration.

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- The LoA granted to them however, is a limited grant. Consequently the operative portion of the orders of the Division Bench effectively scuttles petitioners' ambitious designs to challenge the acquisition.
- The operative portion of the order in O.P.630 of 2018 would indicate that the Division Bench of this Court was not oblivious to the ongoing acquisition proceedings which had by then been commenced, but on the other hand, had taken cognizance of it. This becomes evident from the order of the Division Bench directing the Government to consider utilising a part of the residence of the late Jayalalithaa, then under acquisition, as the Official Residence cum Office of the Chief Minister of the State. This direction would operate as an approval to the acquisition and would bind both Deepa and Deepak. This direction of the Division Bench given to the Government operates as an exception to the LoA within the meaning of Sec.256 of the Indian Succession Act and limits the extent of the authority of the LoA. Sec.218(2) of the Succession Act grants ample discretion to the Court in the matter of grant of LoA, and the person in whose favour the LoA is granted is required to carry out those functions and duties only. Reliance was placed on the authority in *Illachi Devi Vs Jain Society Protection of Orphans India & Others* [(2003) 8 SCC 413].
- The Division Bench heard both O.S.A. 445 of 2018 and O.P.630 of 2018 simultaneously but disposed them by separate orders. The resultant effect is that the order in O.P.630 of 2018 has merged with the order passed in O.S.A.445 of 2018. Secondly, both Deepa and Deepak were parties to both proceedings, and this is indicative of their tacit surrender of rights that they might have had under Sec.15 of the Hindu Succession Act and submission to the testamentary jurisdiction of this Court. They are therefore, estopped from falling back on their right under Sec.15 of the Hindu Succession Act, to challenge the acquisition proceedings.
- The Constitutional right to property of Deepa and Deepak has accrued to them only on 27-05-2020, vide the orders of the Division Bench, and since they are parties to the same, they are bound by it. The rule of estoppel by conduct operates and bars them from maintaining these petitions. Reliance was placed on the authorities in in



Superintendent of Taxes, Dhubri & Others Vs M/s Onkarmal Nathmal Trust [(1976) 1 SCC 766] and Jai Narain Parasrampuria (dead) & Others Vs Pushpa Devi Saraf & Others [(2006) 7 SCC 756].

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- Order XXV Rule 46 and 47 of the Original Side Rules mandate that an inventory as required under Sec. 317 of the Indian Succession Act be filed in Form 67 of Original Side Rules. The writ petitioners have not produced the original LoA, nor have they spoken about their compliance with the mandatory filing of statement of accounts/inventory of all the assets of Ms. Jayalalithaa.
- The award has been passed by the Land Acquisition Officer on 22-07-2020. If at all the petitioners can have a grievance it might relate to the adequacy of the compensation and nothing more. For this they will have to move the appellate authority under Section 64 of the Right to Fair Compensation Act, by preferring an application to the Collector. When there is an effective alternative remedy available, it is impermissible for the petitioners to camouflage their real intent to challenge a concluded acquisition proceedings. Reliance was placed on the decision in Genpact India (P) Ltd., Vs Deputy Commissioner of Income Tax & another [(2019) SCC Online SC 1500 : 2019(16) Scale 667]. That apart, the acquisition cannot now be challenged since awards have been passed, and petitioners have an effective alternative remedy under Sec.64 of RFCTLARR Act. Reliance was placed on the ratio in Municipal Council, Ahmednagar Vs Shah Hyder Baig [AIR 2000 SC 671].

Arguments for the Petitioners:

10. The counsel for the petitioners replied:

- The Division Bench vide its order dated 29-05-2020 by which it amended its earlier order had declared that both the petitioners are the heirs of Ms. Jayalalithaa. Ever since the petitioners have become the lawful owners of 'Veda Nilayam'.
- That the Division Bench was not called upon to decide the legality of the acquisition proceedings, nor has it attempted to do so when it passed its orders in OP 630 of 2018, and OSA 445 of 2018. Therefore, whatever directions it has given therein cannot take away the right of the petitioners to challenge the acquisition as the lawful owners of the property-acquired.



Discussion & Decision

11. The subject of maintainability of the petitions will be discussed under two heads: (a) Effect of the Order of the Division Bench in the proceedings granting LoA; and (b) Effect of Sec.64 of the RFCTLARR Act.

(a) LoA Vs Maintainability:

12.1 The arguments touching upon the maintainability of the writ petitions, were advanced with great degree of conviction by either side. Sadly they were off the track on the lane of law, and failed to convince this Court on the point of their sustainability. If these arguments are examined for their qualitative-merit, what instantly strikes the attention of this Court is the fallacy of the basic premise, which either side, perhaps, have unwittingly, entertained. As would be seen later, it turned out to be a legal adventure or rather a misadventure in jurisprudential misconception, that the vesting of the ownership of 'Veda Nilayam' in Deepak and Deepa is a consequence of the order of the Division Bench, dated 29-05-2020. The difference which either side, however, has managed to bring to their respective arguments is in the choice of the terminologies: while the petitioners opted for the word 'ownership' the respondents preferred vesting of 'Constitutional right to property'.

12.2 If this basic premise is examined further, it would now require this court to start with a supposition that between the date of the death of Ms.J.Jayalalitha and the date of the order of the Division Bench, the ownership of the property remained suspended, or more accurately was in vacuum.

13.1 "An Ownerless property is unknown to law" is an axiomatic statement in jurisprudence. Salmond says that ownership "in its most comprehensive signification, denotes the relation between a person and the right that is vested in him". He proceeds to state that ownership is a residuary right that inheres in a person in relation to the right held by him/her. Austin qualifies ownership as a right which is "indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration." Every jurists has, thus, attempted to approximate their idea of ownership as a 'relation' that inheres in a person over an object as Prof.Holland may put it, or 'a right' as Salmond may advocate. Broadly, ownership is the relationship between a person and a right - an invisible cord that connects a person to a right that adds value to his existence. The right may be in relation to a tangible or an intangible property and vary from a leasehold right to a right over good will. It may vary from an absolute to derivative



title over a property.

13.2 The point of contextual significance however is, what will happen to the ownership upon the death of its holder? This depends on the heritability attached to the right. There are certain rights which are personal to an individual, such as a right to an office, and these rights die with the owner of the rights. There are other rights which are heritable in nature, such as a right over a property. Where a property possesses an inherent character to outlive the death of the person who has held the right over it, then that right cannot exist in a vacuum. It needs to vest in a person, since ownership is the relationship that jurisprudence builds between a person and the right, that relationship cannot hang in a state of suspense. It is here that the law on inheritance or succession of rights comes in. The foundation of the law of succession is essentially a statement which enumerates the persons in whom the relationship which the dead-person had over the property may vest. They provide the rules to identify the person for vesting of ownership.

13.3 The next point is about ascertaining the moment when ownership disappears in a dead person and re-appears in the successors-in-interest of the deceased. The answer is uncomplicated: It happens the moment the owner dies. As the ownership is a relationship between its holder and the right, it does not wait, nor is it postponed, but vests instantly as an incidence or a legal consequence of the death of the owner. The time which *spes successionis* takes to transform into a right of succession is just a heartbeat - its stopping. It accordingly vests in the heirs, or legatees, or executor - but the vesting is immediate. This explains why jurisprudence has created a fiction to equate an unborn child to a living person - to enable vesting of the right of the deceased. If however, there are no successors available, the property will vest in the State by escheat. It can now be derived that where a right is heritable, ownership is neither destroyed nor does it disappear, and that which disappears in one person reappears in another. And the moment succession opens Article 300 A of the Constitution steps in to bring the right so vested within its protective umbrella.

13.4 The aforesaid exposition is not a cocktail of an unknown or an unexperienced variety, but is a jurisprudential brew, far too familiar to the Courts. Lord Parker, tendering the advice of the Privy Council in *Meyappa Chetty v Supramanian Chetty* [AIR 1916 PC 202], observed thus:

"Assuming, but without deciding, that this is to be deemed to be a suit which the testator would, if he were



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living, have a right to institute, their Lordships have come to the conclusion that this contention cannot be upheld. It is quite clear that an executor derives his title and authority from the Will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the Court, he is allowed to prove his title."

In Sheonath v Madanlal [AIR 1959 Rajasthan 243] a learned Single Judge of the Rajasthan High Court came to a similar conclusion and had opined thus:

"As I understand the provisions contained in sec. 213 whether of the Act, or of the Indian Act it clearly seems to me that section does not vest any right or rather any substantive right in anybody. What it really does is to regulate this mode of proving a will, that is, procedure. It is indeed, to my mind beyond doubt or dispute that the rights of the parties with respect to the succession of the estate of the deceased Kan Singh insofar as they are vested or substantive rights fall to be governed by the personal law applicable to the parties, and that is the Hindu Law."

In Raja Kakarklhpudi Venkata Sudarsana Sundara Narasayamma Garu Vs. Andhra Bank Ltd. Vijayawada [AIR 1960 AP 273] a Division Bench of the Andhra Pradesh High Court reached a similar conclusion and had observed as under:

"62. Even before the obtaining of the probate on the death of the testator, the property vests in the executrix 'as such'. It is not Section 213 which deals with the vesting of the property of the deceased persons, but Section 211. The vesting of the property of the deceased persons in the executor as such does not arise from the probate. The executor derives his title from the will. Immediately upon the testator's death his property vests in the executor, for, the law knows no interval between the testator's death and the vesting of the property (vide Whitehead v. Talor [1834 1-0 A and E Page 210.] and Raja Ram v. Fakuruddin Saheb [58 M.L.J. Page 211.] therefore, even without obtaining the probate of the will, the executor becomes the representative of the estate of the deceased. All that the grant of the probate



does is not to give him title, but only to make his title certain (vide Hewsonv. Shelley). [1914 II Ch. 13 at 38.]

In Cherichi Vs Ittianam [AIR 2001 Kerala 184] a Division Bench of the Kerala

High Court concluded as under:

"The prohibition under Section 213 of the Act is regarding establishing any right under the Will without getting probate or letters of administration and that section cannot be understood as one by which the vesting of right as per the provisions of the Will is postponed until the obtaining of probate or letters of administration."

This observations of the Kerala High Court were cited and approved by the Supreme Court in Crystal Developers v Asha Lata Ghosh [(2005) 9 SCC 375]. In FGP Ltd. v. Saleh Hooseini Doctor [(2009) 10 SCC 223], where the Supreme Court reiterated the aforesaid view and opined as under:

"47. Therefore, it is Section 211 and not Section 213 that deals with the vesting of property. This vesting does not take place as a result of probate. On the executor's accepting his office, the property vests on him and the executor derives his title from the will and becomes the representative of the deceased even without obtaining probate. The grant of probate does not give title to the executor. It just makes his title certain.

52. Even if the will is not probated that does not prevent the vesting of the property of the deceased on the executor/administrator and consequently any right of action to represent the estate of the executor can be initiated even before the grant of the probate."

14. If the generality of the jurisprudential concept discussed above is now telescoped into the specifics of this case, it would mean that 'Veda Nilayam' along with the other estates of Ms. Jayalalithaa had vested in her heirs, (who indisputably are Deepa and Deepak) the moment she passed away. Therefore, the order of the Division Bench, as amended on 29-05-2020, if read in this context, has to be understood merely as a declaration of status of the legal heirship of Deepak and Deepa in law, viz-a-viz the estate of their aunt Ms. Jayalalithaa.

15. The next aspect is about understanding the effect of the directions given by the Division Bench. The learned AAG made two points:



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- ◆ First, by virtue of the direction given to the petitioners in O.P.630 of 2018, the petitioners were directed to constitute a Trust with some of the assets of late Jayalalithaa as its corpus, and hence the LoA, in effect is a limited LoA. Therefore, the petitioners have only certain Court-directed obligations to perform and are not the absolute owners with any right to challenge the acquisition of 'Veda Nilayam'.
- ◆ Secondly, in issuing a set of directions in O.S.A 445 of 2018 to the Government to convert a part of 'Veda Nilayam' into the official residence-cum-office of the Chief Minister of the State, the Court, in effect, has affirmed the validity of the acquisition. And, inasmuch as the petitioners are parties to the aforesaid proceedings, the directions of the Division Bench binds them. Indeed, they are estopped from challenging the acquisition.

16.1 This line of argument is too tedious as it seemingly ignores the interplay of legalities attending them. To begin with, the basic premise itself is faulty, since the respondents attach excessive significance to the LoA than what the law permits. The law on vesting of rights on the death of its owner and the LoA has already been explained, and contextually, the argument of the learned Additional Advocate General literally begs the question. Secondly, the LoA is issued only to administer the estate and no more. And, *stricto sensu* it is only optional for a Hindu as is provided under Sec.213(2) of the Indian Succession Act. Sec.218(1) of the Act, provides that while granting a LoA, the Court cannot ignore the successor-at-law of an estate. Therefore, an understanding of the directions given by the Division Bench in its order granting the LoA cannot ignore the legal incidences of the LoA.

16.2 The next aspect is, how to appreciate the two sets of directions given by the Division Bench? Of the two sets of directions those given in OSA 445 of 2018 are seen issued in exercise of the powers of the Court under Article 226 of the Constitution and Sec.151 CPC. [See the tabulation in paragraph 5 above]. These directions tend to deal with the ownership of the petitioners to which they have succeeded by operation of law, and/or with their right of user which ownership grants them as a necessary incidence. How far can then they bind the petitioners in a manner that the Government contends? In *K.A. Raveendran Vs District Collector, Vellore District and others* [2021(4) CTC 527], I had an occasion to hold:

".... right to property has a close nexus to right to life under Art.21 of the Constitution, since the former, to a substantial extent, defines the quality of life a citizen



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has secured for himself under the Constitution. In Delhi Airtech Services Private Limited v State of U.P [2011 9 SCC 354] the Supreme Court termed the right to property as a human right under Article 21 and alluded to it as the seed bed for securing other human freedoms such as liberty. The Supreme Court observed:

"30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists."

The growth of Constitutional jurisprudence in this country has been chiefly characterized by the constant search of the Constitutional Courts to discover the expandability of the concept of right to life under Article 21. Its objective is to include as many, exclude none, and at all times to check the Executive temptations to tread upon it, even accidentally, except in accordance with the procedure established by law. The multitude of rights that go to constitute right to life, sometimes termed as penumbral rights, are comparable to the advaita philosophy in that each of such fractional right itself possesses the characteristics of the whole. Soham. Hence, an understanding of the right to property only in economic terms may not be a right idea, nor will be an understanding that its infringement should produce a tangible loss. An infringement of right to property will therefore enjoy an expanded meaning proportionate to the expandability of the right to life under the Constitution...."

Given the significance which right to property enjoys under the Scheme of our Constitution, a divestiture of a vested right of the citizen can be justified only by the 'authority of law'. It may include a transfer inter vivos at the instance and volition of the holder of the right, or by testamentary transfers, or by a process of forced-divestiture of rights by a decree of the Court or Tribunal, or by confiscation or acquisition by the State in exercise of its statutory power of eminent domain. If any of these modes of divestiture of rights become the subject



matter of an action, then the Court may pronounce on the legality of the divestiture, or on the mode adopted, and its jurisdiction does not stretch beyond that. No court therefore, has the power to order the divestiture of a right collaterally, or to interfere with any aspects of right of ownership or enjoyment of the property, unless there is a statutory sanction for its action.

17. Contextually, how far can judicial pro-activism go? The outer contours of Judicial activism and creativity is markedly defined by strong internal restraint and discipline. The courts shall at no time plead helplessness when rights of the citizens are in peril, but it is also required to be underscored that judicial pro-activeness is but a compelling response to an impelling situation that imperils the rights of the citizens. While negotiating them, judicial methods helps themselves with an allowance to breach the line of conventionalism to stray into the zone of unorthodoxy, still they cannot go astray to tread into areas which Constitutionalism fears to tread. In the march of our Constitutional jurisprudence, this has happened many times as they ought to be, yet, and to re-emphasis, they are contrived to redeem the rights to the citizen, and not to destroy or amputate them. That which the Constitution frowns, the Court shall desist from engaging.

18. How far the directions given in OSA 445 of 2018 bind Deepa and Deepak? And, is the mere fact that they were parties before the Division Bench sufficient to deny them their right to challenge the acquisition of 'Veda Nilayam' in a separate proceeding? In other words, can this set of directions be considered as a judicial approval to the intended acquisition? This Court holds it in the negative. The reasons are:

- First, it is beyond the scope of the proceedings before the Division Bench, which, to reiterate, was only required to identify the right person in law who is entitled to be issued with the LoA. Therefore the directions are at the best an obiter and not the ratio of the decision.
- Secondly, in terms of the Court's authority to interfere with the right to property of a citizen under Article 226 of the Constitution, unless it can be demonstrably established that the powers under Article 226 is capable of being equated to any 'authority of law' under Article 300A of the Constitution, it will be nigh difficult to pin the petitioners down to the set of directions which the Division Bench has issued. It may have to be stated that both Article 226 of the Constitution and Sec.151 CPC are empowering provisions which clothe the Court with the jurisdiction to remedy a wrong brought before it. It will



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therefore be a shocking contradiction if not a painful anathema to the understanding of the Constitution, if remedial provisions are to be read as enabling expropriatory interference with the private estate of the citizens. The nature, scope, intent, character and purpose of Article 226 of the Constitution and/or Sec.151 CPC, defies an interpretation that they can be the fountainhead of any expropriatory or regulatory power of the Court that can authorise interference with the right to private property. Any idea to the contrary will be plainly anti-Constitutional. It can be now derived that these provisions are incapable of being equated to any 'authority of law', within the meaning of Article 300-A of the Constitution.

- Thirdly, the proceedings before the Division Bench does not involve the legality of the acquisition of 'Veda Nilayam', though in passing, it might have been referred to. Some statements might have been made, they do not foreclose the right of the petitioners to challenge the acquisitions. Does it require any exposition, or even an emphasis, that inasmuch as the Constitutional right to property has been telescoped and identified as a fundamental right under Article 21, it cannot be waived as held by the Hon'ble Supreme Court in *Bheshwar Nath Vs ITO* [AIR 1959 SC 149]?

(b) Maintainability Vs Sec.64 of the Right to Fair Compensation Act

19. The next limb of the submission on the maintainability is that this Court should not exercise its discretionary jurisdiction under Article 226 of the Constitution as the petitioners have an effective alternate remedy under Sec.64 of the Act. There is hidden in it yet another fallacy. If Sec.64 is examined for its scope and purpose, it is beyond any pale of controversy that the remedy of an aggrieved person is confined to (a) measurement of land; (b) amount of compensation; (c) person to whom it is payable; (d) the rights of Rehabilitation and Resettlement under Chapter V and VI of the Act; and/or (e) the apportionment of compensation among the persons interested. Sec.64 neither expressly nor impliedly empowered the authorities to sit in appeal over an allegation of colourable exercise of power of eminent domain and to determine if the acquisition involves a public purpose within the meaning and framework of the Act. That which is not statutorily enabled is legally prohibited. See: *Etti Gounder & Others Vs The District Collector, Namakkal District & Others* [2021-5-LW.262 (paragraphs 18.1 to 18.3)]. This argument fails too.

20. To conclude, this Court holds that the set of directions which the Division Bench has issued in O.P.630 of 2018 and OSA



445 of 2018 do not bind the petitioners (as much as the respondents themselves have rejected the Court's suggestion of converting part of Veda Nilayam into the residence of the Chief Minister of Tamil Nadu). The writ petitions are therefore, maintainable.

PART II
DOES A MEMORIAL CONSTITUTE A PUBLIC PURPOSE &
COLOURABLE EXERCISE OF POWER OF EMINENT DOMAIN

21. The petitioners contend that RFCTLARR Act does not enable or permit acquisition of a property for constituting it into a memorial, since the definition of public purpose read with the Statement of Object & Reasons (SOR, for short) along with the preamble to the Act does not authorize any such purpose. Their strategy is to use the SOR & the preamble as interpretative tools to limit the operative width of the expression 'public purpose' in Sec.3(za) read with Sec.2(1) thereof. To sustain this argument, they also lean back on the Statement of Objects & Reasons of the Land Acquisition Act, 1894, and the definition of the phrase 'public purpose' in Sec.2(f) therein. A comparative study of these two enactments, according to them, provide the indicators to understand the conceptual shift in the legislative intent in moving from a regime of 'absolute power of eminent domain' of the British vintage to a qualified power of acquisition of private property.

22. The Government's stance is threefold:

- That the definition of 'public purpose' in Sec.3 (za) read with Sec.2(1) of the RFCTLARR Act is an inclusive one, and hence an acquisition for establishing a memorial (for Ms. Jayalalithaa) is permissible under the Act. Reliance was placed on the ratio in Ramanlal Bhailal Patel Vs State of Gujarat [(2008)5 SCC 449]. The Court, in the guise of judicial review may not read in a restriction which the legislature, in its wisdom, has chosen not to impose.
- Determining what constitutes public purpose is within the exclusive domain of the Government, and this can neither be questioned. Reliance was placed on the judgements in Daulat Singh Surana Vs First Land Acquisition Commissioner [(2007)1 SCC 641], Sooraram Pratap Reddy & Others Vs District Collector & Others [(2008)9 SCC 552], Bajirao T. Kote & others Vs State of Maharashtra [(1995)2 SCC 442] and Scindia Employees Union Vs State of Maharashtra & Others [(1996)10 SCC 150]. Besides, a declaration under Sec.19 of the RFCTLARR Act (corresponding to Sec.6 of the Land Acquisition Act) is conclusive as to the public purpose involved in the acquisition vide the



judgement in Sooraram Pratap Reddy & Others Vs District Collector & Others [(2008)9 SCC 552].

➤ Constructing or constituting an existing structure as a memorial for leaders and men of pre-eminence has been a pan world practice, and acquisition for the purpose has always been acknowledged to involve a public purpose. The ratio in Kanaiyalal Maneklal Chinai Vs State of Gujarat [(1969)3 SCC 456] and Ashok Maruti Rawoot Vs State of Maharashtra [PIL 36/2012, decided on 25-02-2013 (Bombay) (DB)], were cited.

23. Taken superficially, these arguments are suggestive of certain interpretative intricacies of familiar variety which are, and can be, resolved by the known tools of statutory interpretation. However, a closer consideration reveals that they are layered. Does RFCTLARR Act, 2013, accommodate an acquisition for a memorial? What factors decide that? This requires reacquainting the known forensic indicators.

24. Eminent domain signifies the authority of the State to reassert, either temporarily or permanently, through its agencies, its dominion over any portion of the soil of the State including private property without its owner's consent for a public good founded on public exigency. Eminent domain is an essential attribute of every State, and is founded on the principle that the interest and claim of the whole community is always superior to the interest of an individual. Historically, it is founded on a presupposition that property remains in the Government, or in the aggregate body of the people in their sovereign capacity.

25.1 The origin of the concept of eminent domain is traced to the writings of the Dutch Humanist and Philosopher Hugo Grotius who is stated to have observed in De Iure Belli Ac Pacii (on the Law of War and Peace) (1625) thus:

"The property of subjects is so far under the eminent control of the state, that the state or the sovereign who represents it, can use that property, or destroy it, or alienate it, not only in cases of extreme necessity, which sometimes allow individuals the liberty of infringing upon the property of others, but on all occasions, where the public good is concerned, to which the original framers of society intended that private interests should give way. But it is to be added that when this is done the State is bound to make good the loss to those who lose their property."

Existence of a 'public good' accompanied by a duty to "make



good the loss" characterize the expropriation of property through power of eminent domain. An amplified restatement on this is found in the following passage of the decision of the Constitution Bench of the Hon'ble Supreme Court in State of Bihar v Kameshwar Singh [AIR 1952 SC 252].

"The concept of the public use has been inextricably related to an appropriate exercise of the power and is considered essential in any statement of its meaning. Payment of compensation, though not an essential ingredient of the connotation of the term, is an essential element of the valid exercise of such power. Courts have defined "eminent domain" so as to include this universal limitation as an essential constituent of its meaning. Authority is universal in support of the amplified definition of "eminent domain" as the power of the sovereign to take property for public use without the owner's consent upon making just compensation."

25.2. Section 3(f) of the Land Acquisition Act, 1894, provided an inclusive definition of the term "public purpose". The definition opened with the words: "Public Purpose includes.." A close examination of the early decisions under the Land Acquisition Act, 1894, would show that Courts have, advisedly, guarded themselves from attaching any definite meaning to the definition contained in Section 3(f). Thus, in Hamabai Framjee Petit v. Secretary of State for India [AIR 1914 PC 20], the Privy Council was prepared to accept the following observations of Batchelor, J of the Bombay High Court, as stating the accurate legal position:

"General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase 'public purposes' in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

The concept of "public purpose" was well articulated by the First Bench of this Court in Thambiran Padayachi v State of Madras [AIR 1952 Mad 756]. The learned judges adverted to several American decisions and literatures alluding to the synonymous expression "public use", and approved the following passage from Willis on Constitutional Law :

"What is a public use? On this question there have been two view points. One may be called the older viewpoint



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and the other the newer viewpoint. According to the older viewpoint, in order to have a public use there must be a use by the public..... According to the newer view point there is a public use if the thing taken is useful to the public.....In this case there is not necessarily a general use by the public but there is a general benefit to the public. Private enterprises are thus allowed to exercise sovereign power of eminent domain not because they are taking the property for their own use but because in taking the property for their use they are benefiting the public" Referring to this newer viewpoint Nichols writes:

"Judicial opinion which follows the broad or liberal concept considers that the narrow doctrine has been repudiated and is no longer the prevailing view. 'Public use' is considered 'public benefit' and it is not considered essential that the entire community or even any considerable portion thereof should directly enjoy or participate in any improvement in order that it constitutes a public use"

This decision of the Madras High Court was cited with approval by the Law Commission of India in its 10th Report on the Law of Acquisition and Requisitioning of Land (1958). The Commission noted that an inclusive definition best served the purpose as "in an ever changing world, the connotation of the expression "public purpose" must necessarily change." Quoting the American jurist Alfred Jahr, the Commission opined that "to formulate anything, even though it were possible, would, in a changing world, be unwise if not futile. The Law of each age is ultimately what that age thinks the Law should be." The Commission concluded by observing as under:

"All that can, therefore, be attempted in a legislation of this kind is to provide an inclusive definition, so as to endow it with sufficient elasticity to enable the courts to interpret the meaning of the expression 'public purpose' according to the needs of the situation, and this is what we have attempted."

In Sooraram Pratap Reddy v. Collector [(2008) 9 SCC 552], the Supreme Court held that the expression is incapable of precise and comprehensive definition, adding that it is neither desirable nor advisable to attempt to define it. The Court opined that it is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be benefited. Also see Somawanti v State of Punjab [AIR 1963 SC 151].



26. Has then the idea of public purpose undergone any conceptual shift under Sec.3(za) of the RFCTLARR Act? The metamorphic transition of the definition of the expression 'public purpose' from the preliminary stage of Land Acquisition, Rehabilitation and Resettlement Bill, 2011, to its final version in Sec.3 (za) of the Right to Fair Compensation Act provides the right background. This definition was, however omitted, thanks to an amendment brought to that effect before the Parliament when the Bill came up for consideration. What the Government has, and what the Court requires to consider is the referential definition of 'public purpose' found in sec.2(1) of the Act.

27. Sec.2(1) of the Act reads:

"The provision of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes namely:

(a) For strategic purposes relating to naval, military, air force, and armed forces of the Union, including Central Para-Military Forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) For infrastructure projects, which includes the following namely:-

(i) All activities or items listed in the Notification of the Government of India in the Department of Economic Affairs (Infrastructure section) Number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals private educational institutions and private private hotels;

(ii) Projects involving agro-processing, supply of inputs to agriculture warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and met processing, set up or owned by the appropriate Government or by a farmers' co-operative or by an institution set up under a statute;

(iii) Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing



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Policy;

(iv) Project for water harvesting and water conservation structures, sanitation;

(v) Project for Government administered, Government aided educational and research schemes or institutions;

(vi) Project for sports, health care, tourism, transportation or space programme;

(vii) Any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) Project for project affected families;

(d) Project for housing, or such income groups, as may be specified, from time to time, by the appropriate Government;

(e) Project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) Project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, or any local authority or a corporation owned or controlled by the State.

28. The definition of 'public purpose' being what it is, the arguments of the petitioners now aim to limit its operative space with the theme disclosed in the SOR for the Act as well as that in the Preamble. While considering this aspect, this Court is mindful of its role in interpretation of the statute and the process involved in it:

- The principal aim of the Court is not to create for itself a need for interpreting the provisions of an enactment with a set of interpretative-tools, unless the Statute itself presents a scenario requiring the Court to interpret. Courts are not to substitute its wisdom to replace the legislative wisdom, for it is the latter's job to legislate.



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➤ A need for interpretation arises when the words and expressions which the legislature has opted to employ to convey its intent or an idea, taken in their plain and ordinary meaning, either lead to ambiguity in understanding them, or absurdity while working it. But, not otherwise.

➤ And, to appreciate the extent to which the Court may fall back on the SOR for an Act or to its the Preamble, there is hardly a need for expounding anything new since the law on the point is too firmly entrenched, to highlight which no more than two authorities (separated by some fifty-eight years) are sufficient: In *State of West Bengal v Union of India* [AIR 1963 SC 1241], the Hon'ble Supreme Court has held:

"It is however well-settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owners of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute."

In *Jaishri Laxmanrao Patil v. State of Maharashtra*, [(2021) 8 SCC 1], the Hon'ble Supreme Court has reiterated:

"111. There cannot be a disagreement with the proposition that where the provisions of the statute or its wordings are ambiguous, the first attempt should be to find meaning, through internal aids, in the statute itself. Failing this, it is open to the court to find meaning, and resolve the ambiguity, by turning to external aids, which include the Statements of Objects and Reasons, as well as parliamentary reports, or debates in Parliament. To this Court, it appears that the task of interpreting the provisions of ... does not begin by relying on external aids such as Statement of Objects and



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Reasons (which throw practically no light on the meaning of the provisions), or even the Select Committee Report. The task of interpretation is first to consider the overall scheme of the provisions, and secondly, after considering the provision, proceed to resolve any perceived ambiguity, if found, by resorting to aids within the statute. It is at the third stage, when such resolution is impossible, that external aids are to be looked into."

29. The core principles of statutory-interpretation being what they are, the arguments of the petitioners must be tested on its anvil. When so done, this Court finds:

- As in its earlier version in Sec.3(f) of the Land Acquisition Act, 1894, the RFCTLARR Act vide Sec.2(1) also provides an inclusive definition of 'public purpose'. What is made obvious by the statute, such as where the acquisition by the Government for it to own, hold and control, and the other categories which are listed in Sec.2(1)(a) to (f) hardly requires any interpretation. What is not made obvious in the definition shall have to be necessarily read into the word 'includes', provided that the object behind acquisition is useful to the public as to constitute public purpose as has been understood by the Courts.
- An acquisition for establishing a memorial is not expressly enabled in the definition of 'public purpose' as in Sec.2(1) of the Act. The Government now requires the court to read it within the phrase that authorizes the appropriate Government to acquire land "for its own use, hold and control", alongside Sec.2(1)(b)(vi) which inter alia authorizes acquisition for promoting tourism.
- The petitioners however, would contend that neither of the two situations can accommodate an acquisition for establishing a memorial, and that, that which may qualify to be read within the inclusive character of the definition - the not so obviously stated heads in the list of public purposes, are those that share a common character with any of those that are expressly stated. In other words, the intended public purpose must have the features of infrastructural projects. The only support they summoned to strengthen this argument is the Statement of Objects and Reason and the Preamble of the Act.

30. This now raises two primary questions:

- First, should the unsaid heads of acquisition which may be



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brought within word 'includes' in Sec.2(1) have for its object only infrastructure?

➤ Second, if the first is decided against the petitioners, then to ascertain if there is a public purpose involved in acquiring Veda Nilayam to constitute it into a memorial.

***31.** Turning to the first, this Court finds that Sec.2(1) does not stop with infrastructure projects exclusively, but also allows for acquisition for other purposes as well. The definition may not be as specific as it was in the Bill, but this is what the legislature has presented the country with. The theme of acquisitions for purposes which are not made evident by the definition clause therefore, cannot be restricted to infrastructure alone, but it can be for diverse purposes. That is the legislative intent - to grant the Government ample elbow room to operate, lest it would defeat the purpose of making the definition inclusive. On this point, this Court is in agreement with the arguments of the learned Advocate General.

***32.** The bottom-line is that the Government can acquire private property for any purpose of its choice, provided the purpose is 'useful to the public'. This is the key. This is the test. To state it differently, as long as the purpose behind an acquisition is useful to the public, it can be read as falling within the inclusive definition of Sec.2(1) of the Act. This leads to two questions:(a) Is an acquisition for establishing a memorial useful to the public? And, (b) whether acquiring 'Veda Nilayam' in particular for constituting it into a memorial for Ms.Jayalalitha, its former owner and the former Chief Minister, is useful to the public.

33. This immediately brings to fore the scope of judicial review of an administrative decision to acquire private lands.

Judicial Review and Public Purpose:

34.1 In Khudiram Das Vs State of West Bengal [(1975)2 SCC 81], it was held that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government governed by the rule of law, there can be no such thing as unreviewable discretion. The power of eminent domain being statutory, it necessarily follows that the validity of its exercise is not immune from judicial scrutiny under Article 226 of the Constitution. Way back in 1798, Justice Samuel Chase famously declared in the case of Calder v Bull [3 US 386):

"An ACT of the Legislature (for I cannot call it a law), contrary to the great first principles of the social compact, cannot be considered a rightful exercise of the



legislative authority."

As an instance of such abuse, Chase, J cited the instance of the legislature authorizing a law that takes property from A and gives it to B. Obviously, such laws served no public use, vitiating the exercise of power. However, in *United States v. Gettysburg Electric Ry Co*, [160 US 668 (1896)], Justice Rufus Peckham held that when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation. In *Old Dominion v United States* [(269 US 55 (1925))], Holmes, J of the U.S Supreme Court went so far as to declare that the decision of the Government on public purpose was entitled to deference unless it was shown to involve an impossibility.

34.2 The test of "palpably without reasonable foundation" has been applied to examine the concept of "public purpose" in India as well. See *Sooraram Pratap Reddy v. Collector*, [(2008) 9 SCC 552]. Turning to the scope of judicial review, the Courts in India have however, have not accorded absolute discretion to the Government on the question of public purpose. The position is that the view taken by the Government on what constitutes public purpose (in acquiring a land) will only be a "prima facie one", the ultimate arbiter will be the Courts. This is clear from the decision of a Constitution Bench of the Supreme Court in *State of Bombay v. R.S. Nanji*, [1956 SCR 18], wherein it was observed thus:

"Prima facie the Government is the best judge as to whether 'public purpose' is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a 'public purpose.'"

To the same effect is the decision in *Jilubhai Nanbhai Khachar v. State of Gujarat* [1995 Supp (1) SCC 596]. In *Srinivasa Cooperative House Building Society Ltd. v. Madam Gurumurthy Sastry*, [(1994) 4 SCC 675], the Court added that the acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. In *Dev Sharan v. State of U.P.*, [(2011) 4 SCC 769], the Hon'ble Supreme Court has held:

"17. It must be accepted that in construing "public purpose", a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to



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acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by preconstitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under fundamental rights and also the directive principles."

In *Menaka Gandhi Vs Union of India* [AIR 1979 SC 597], V.R.Krishna Iyer, J pointed out that the catch-all expression 'public interest' is sometimes an easy temptation to cover up from the public that which they have right to know, which appeals in the short run but avenges in the long run. Therein is hidden the authority of the State to acquire private property in the guise of public purpose, which the Court ought to weigh in a particular case to ensure that it does not avenge in the long run.

35. To collate the factors which the judiciary has evolved to determine the scope of judicial review vis-a-vis the public purpose behind an acquisition, the Government's decision on what constitutes public purpose is only a prima facie assessment, and it is not conclusive. Power of judicial review has its own operational space and rules, within which every administrative action can be tested. This undoubtedly enables the Court to scan the Government's idea of a 'public purpose' which is readable within the inclusive definition of Sec.2(1) and to ascertain that the stated public purpose is not a mask for a malafide acquisition which has for its intent only benefit for a particular group than public at large, or is plainly irrational, unreasonable, or perverse, to borrow the *Wednesbury* principle as amounting to a fraud on the statute. See: *Sooraram Pratap Reddy v. Collector*, [(2008) 9 SCC 552].

36. Every time an acquisition is challenged as a colourable exercise of statutory power, it pushes the Court to shift its focus from merely scrutinizing the existence of statutory power to acquire, but to get into its deeper layers to ascertain if the object behind acquisition is useful to the public. This is the distinctive line of demarcation that separates what the learned Advocate General has argued and what this Court proposes to do. To expatiate it, where the object behind an acquisition reflects, without anything more, a public purpose, then the Court's role is limited. However, the duty of the Court may go beyond that to examine if the stated object of an acquisition leaves a larger question as to the very existence of a public purpose. Precisely for this reason this Court may not concur with the argument of the learned Advocate General that the



Government's declaration of 'public purpose' is final and conclusive.

37. Turning to the various authorities that were cited, the facts in Sooraram case [(2008) 9 SCC 552] involves a challenge to acquisition of land for a company for establishing a leisure cum business infrastructure for tourism, and the Court found that acquisition had for its purpose - developing infrastructure. The usefulness to the public is inbuilt in the acquisition, as the facts of that case reveal. In Daulat Singh Surana case [(2007) 1 SCC 641], the acquisition was intended for constructing an office cum residence of the Deputy Commissioner of Police at public expense. The Court held that it involves a public purpose within the meaning of Sec.3(f) of the Land Acquisition Act. Under the RFCTLARR Act, it will obviously fall under the category of acquisition that enables the Government to own, hold and control the property acquired, and hence there will be least difficulty in holding that the acquisition was for a public purpose. In Bajirao's case [(1995) 2 SCC 442] land was acquired for establishing a road connecting Sai Mandir at Shirdi with 'Dwaraka Mai Mandir. And it requires no greater evidence to demonstrate public purpose than the fact that crores of Sai devotees are actually using the said road. Acquisition of land for public purpose was, therefore, written all over the project. In Scindia Employees Union case [(1996) 10 SCC 150] the acquisition was intended for expansion of the dockyard for defence purposes. Is there not a public purpose self evident in the very project for which acquisition was made? It is in the context of the facts involved in each of these cases that the Hon'ble Supreme Court has declared that the Government's decision on what it considers as public purpose cannot be second guessed in the judicial review. However, in none of the cases, the Court has negated the power of judicial review over an Executive decision to acquire private lands. The ratio of various authorities of the Hon'ble Supreme court are facts-specific, and they do not advocate universal application dehors the facts involved in a particular case. Here, as elsewhere, we must remember the warning of the Lord Chancellor the Earl of Halsbury in Quinn Vs Leatham [1901 AC 495]:

"Every judgement must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it."



38. The principles thus far made available in the test-kit of judicial review evolved (See paragraph 35 above) for evaluating the correctness of an administrative action involved in land acquisition are not exhaustive. They not only aid the Court in the review of the administrative actions, but also serve as a useful guide to the Executive in demonstrating that its actions must not only be just, legal and fair, but must also be seen to be so. Judicial review is an 'agni pariksha' for the Executive action, and it gives constant opportunities as well as reminders for it to be clean, and to come clean before the voting populace of this Republic. If the statement that the Courts are the sentinel on the qui vive is valid in our Constitutional scheme of things, it leaves a prodding message to match its level of creativity to the demands of changing times and circumstances. The demand on judicial creativity in responding to an Executive action is therefore, proportionate to the latter's ability to outmaneuver the Statute with the pretense of its compliance. Having stated thus, this Court is equally conscious that it must refrain from treading into domains where the Constitution has created its own institutions of governance. Power of judicial review is no more than ascertaining if the Executive actions conform to the Constitutional and/or statutory standards, and no more. The discipline required in exercising the power of judicial review can be compared to the skill required in playing an out-swing, bowled on the length on the off stump on a grassy, bouncy track - the can't-avoid-deliveries that feed irresistible temptation to go for them. The Courts are often dragged to play them, and at times cannot avoid playing them. How well it plays these balls - it deals with its power of judicial review, will be the test of its character which gets converted into the scorecard of its performance in the functional audit by the citizens of this Country. These aspects will now guide this Court in scanning if the acquisition for a memorial for Ms. Jayalalithaa is useful to the public as has been believed and projected by the Government.

39.1 A memorial is constructed or constituted to retain the memory of a person or a thing, or an event for the future generation. Can an acquisition for a memorial qualify for it to be considered as involving a public purpose within the statutory scheme of RFTLARR Act? The answer can be a Yes and No. Generically it can be; but individually it need not be. It is not determined by a mere intellectual exercise in statutory interpretation if a definition is an inclusive definition or in ascertaining if a memorial can be brought within the elastic limits of an inclusive definition under Sec2(1), or about the Government's power of acquisition, but by its organic content - its usefulness to the public. In other words, the fact that the legislature has opted for an inclusive definition for 'public purpose' does not imply anything that the Government



terms as involving public purpose can be automatically brought within the inclusive definition. On the other hand, it has to satisfy the test of 'usefulness to the public' for it to gain an entry within the definition.

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39.2 A memorial is not a piece of structure, nor a monument, nor an art-exhibit for promoting tourism, but is a symbolism of the principles that characterized the person for whom a memorial is proposed. The criterion is to state the obvious: There lived the person who will never return, yet whose life is not removed, nor should ever be removed from public memory and social consciousness. It is not dictated by professional achievements, political populism, an image carefully groomed by cultivated charisma, electoral victories, but is defined by how dedicated the life has been to the cause of, not a caste (or even anti-caste), or a political party, but to the society, to preserve rights of its members, to conserve its culture and wealth in the spirit of Constitutional values. A life that was must be the message it should leave. Its value must be measured by the dedication and sacrifices made - not in anticipation of any accolades or in expectation of an honour in the Ashoka hall of fame, but in the realisation of one's duty to the society. Memorials would then be erected for those lives, not just in their honour but also as a reminder to inspire and motivate generations of citizens.

40. In the context of reading an acquisition for a memorial within the inclusive definition in Sec.2(1) of the Act, as already held that it will no more be a matter for an unilateral declaration of the Government, but is a matter for judicial review, more so when the acquisition faces an allegation of colourable exercise of statutory power. If it is not, there is a grave risk of wasting public money on erecting memorials for those whose life, taken wholly and not selectively, hardly has a message for the public. As long as public money is involved, a scrutiny by the court to examine if a memorial constitutes a public purpose cannot be avoided.

41.1 Support for the decision of the Government to constitute 'Veda Nilayam' into a memorial for Ms.Jayalalithaa was sought to be drawn from the judgement of the Hon'ble Supreme Court in Kanaiyalal Maneklal Chinai Vs State of Gujarat [(1969)(3) SCC 456]. The challenge in that case was to the acquisition of a land at the instance of Ahmedabad Municipal Corporation for establishing a memorial for Mahatma Gandhi, not on the ground that establishing the memorial did not constitute a public purpose, but on the ground of its legality - on the competency or the the power of the land acquiring authority to invoke the provisions of Land Acquisition Act, 1894. In its judgement the Hon'ble Supreme Court has observed:



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"The land is needed for setting up a memorial to Mahatma Gandhi at a place associated with him, and we regard, because of the universal veneration in which the memory of Mahatma Gandhi is held in our country, that the purpose was a public purpose."

41.2 Is this not a statement on the quality of the man that Mohandas Karamchand Gandhi was, that justified treating his memorial as one involving a public purpose? And, in drawing strength from this passage, has not the Government acknowledged that the benchmark for establishing a memorial with public money can be justified only if the life and contribution of the person for whom the memorial is proposed approximates the life of Gandhiji and those of his ilk?

42. When on a dark South African night a young M.K.Gandhi, the barrister, was thrown off the train, he did not bite the incident as an insult personal to him, but allowed it to agonise his soul as it was abhorrent to his perception and understanding of humanity. His consciousness was ignited and so was his conscience. He used a racial slur to galvanize his inner energy and channelized it to bind the nation together, to dare and shame the British imperialism. He rarely matched the looks of a movie star to breed a fan-following, yet he appears exemplarily handsome in the hearts of world citizens for the conviction he held, for the methods he adopted, and the walk the talk he did. Winston Churchill might have used his choicest expletive to term him a half naked fakir, but Gandhiji along with his followers replied with his fortitude to frustrate the British. In serving the nation he set himself no destination. He lived half naked, died half naked, earned nothing and gave everything - his blood, sweat, toil and tears for the cause of the nation. His life is a story of sacrifices. He has his critics, then and now, and his political philosophy and strategies are frequently commented upon. That however, is the hallmark of a free society that this country is, and has always been. But they neither undermine nor discredit the sacrifices Gandhiji had made. Beyond the fame and popularity he might have had in his time, the essential Mahatma is relevant even to this day. His life indeed is his message. Can the immortality that the Mahatma has attained ever be compared with the idolation of an orchestrated brigade of excited followers that one often witnesses?

43. Any memorial for Gandhiji and/or any of those who joined him with a sense of renunciation, is a befitting tribute that the nation can give them. These memorials will remind generations of our countrymen that there lived these men, not as characters in fables or comics but in flesh and blood, on the face of this country, for them to emulate. Is it not therefore necessary if the persons in whose memory Government contemplates



dedicating memorials, no matter how worshipful it may consider that they are, meets this criteria? Is it not necessary for them to inform the people of this country, and not just the members of the political party to which the leader belonged, that the life of the leader indeed was a message: a life of sacrifices, integrity, fidelity to Constitutional ethos, to state a few? It may now mean that any life in public life may deserve a memorial at the cost of public money only when it also has demonstrably dedicated itself to the service of the society or even a section thereof, but along the lines of the Constitutional values.

44. Reverting back to the core issue, is the decision of the Government to constitute the residence of late Ms. Jayalalithaa as a memorial at the cost of public money useful to the public? The popularity of the leader, or the respect a leader may have commanded, or the electoral successes achieved by themselves may not be adequate, since their mechanics and dynamics are regulated by a combination of complex-calculus of politico-social psychology and strategies. And, these factors can only demonstrate prima facie, the value and indispensability of the leader to the political party or any organisation to which the leader may belong. However, justification for acquisition of private property in law is only based on its usefulness to the public at large, unrelated to the excitement or sentiments of the political party in power. Therefore, and to reiterate, when an acquisition is challenged as lacking a public purpose, its determination is not dependant exclusively on what the Government states, but by the quality of material which the Government places before the Court to demonstrate the existence of a public purpose. Has this been done in this case?

45. In contemporary times, where there is a perceptible depreciation of ethical standards and corrosion of moral values which cumulatively leave their adverse impact on the Constitutional responsibility and institutional integrity, there may not be too many leaders who may match the standards of those who gave their lives for the cause of the nation or the humankind. In other words, if a life of the leader has only a relative value to some and not to the substantial number, then there is a risk of it becoming a memorial for a group of followers, and not the public, and may well fail in a judicial review of an alleged colourable action of the Executive.

46. There is another fact, which was mildly touched in the affidavit of the petitioner but on which not much argument was heard is that the Government indeed has built a memorial - an imposing phoenix shaped one at the Marina beach, where Ms. Jayalalithaa was laid to rest. This was stated to have been constructed at the cost of about Rs. 80.0 crores of public



money. Its relevance in the context cannot be ignored. This was challenged in a public interest litigation before this Court in W.P 21701 of 2018. This decision was defended by the Government of Tamil Nadu contending that the decision to erect a memorial for the former Chief Minister was a policy decision. A Division Bench of this Court, vide its order dated 23.01.2019, dismissed the writ petition primarily on the ground that there was no challenge to the clearances accorded/sanctioned for construction of the memorial. Nevertheless the Division Bench did point out:

"32. It has become a practice rather a norm to build memorials in honour and memory of former Chief Ministers and leaders of this Country and public money had been spent for that purpose and the justification is that memorials/statutes would remind the public about the contribution made by them towards the development of the State/Country.

33. It is pertinent to note at this juncture that public money can be spent for construction of hospitals, school, colleges, implementation of developmental projects and provision of basic facilities/amenities to the citizens, in honour and memory of great leaders and it would be an ever lasting memory in the mind of the citizens/people. However, it is for the Government concerned to take a call and this Court cannot issue any positive direction to do so." (emphasis supplied)

This order was challenged in S.L.P (Civil) 7518 of 2019 before the Hon'ble Supreme Court, but was dismissed, in limine, vide an order dated 22.04.2019.

47.1 The Marina memorial does not involve any acquisition, but does it not inform that a memorial indeed has come up for Ms.Jayalalithaa? 'Veda Nilayam' is only a few kilometers away from the Phoenix-memorial. Is it not one memorial too many? What is the inspirational story that 'Veda Nilayam' may provide which the Marina memorial does not? What then is the public purpose in acquiring a private residence of the former Chief Minister? Beyond the smoke screen of 'policy decision', and the Government's (presumed) prerogative to attribute 'public purpose', this Court is still searching for an answer. And, the fact that the notification for acquisition has been published a couple of years before the Court had cleared the construction of the Marina memorial for the former Chief Minister is immaterial, for what ultimately matters to this Court is defraying public money on a second memorial for the same Chief Minister.



47.2 If the grounds which the Government speak through the affidavit of its bureaucrat, the District Collector, (See: Paragraph No.7.2) for explaining the public purpose is filtered, they project certain personal traits of Ms. Jayalalithaa, the respect she commanded etc., Elsewhere, the same Collector had addressed a communication dated 07-07-2020 to the Director, Tamil Development & Information (Memorials), (the circumstances under which this was written was not evident) it refers to certain welfare measures when Ms. Jayalalithaa was heading the Government. This Court does not intend to engage in a probe if the personal traits of a leader, or if the welfare measures introduced by the leader as the Chief Minister are sufficient to justify expending public money for erecting a memorial. Are not providing welfare measures without any personal gain is the duty of any Government? At any rate are the reasons cited explain why there ought to be a second memorial for the same leader?

48. From time immemorial, mankind has demonstrated an indefatigable energy to erect monuments to immortalise their dead. The Pyramids at Giza in Egypt built by the pharaohs or our own Taj Mahal at Agra by the Emperor Shah Jahan for his Begum are apposite examples. But the India of today is not a land of pharaohs or Emperors, but one which belongs to the people of this country. The India of today is an India wedded to the ideals of Constitutionalism, Republicanism and the Rule of law, and the Courts, as sentinels, must abjure any attempt by the political dispensation to keep alive practices, which may have been readily acceptable in the by-gone times of the Rajas and the Maharajas. It's our 75th year of our independence and the 72nd year of our Constitution, but the hangover of the past appears to stay with a section of our countrymen.

49. In a State where the substantial number of its populace are struggling for a dignified life under the Constitution, for whom Part III and Part IV of the Constitution are yet to become relevant, the Court may not remain insensitive and play Dhridarashtra when the Government decides to divert crores of public money mindlessly. Has not the cry of the citizens reached the powers that be? The Daridra Narayanas of this country are being promised El Dorado since independence. With no intent to make a political statement, yet with no intent to blindfold itself to the reality around, it must be told that the electoral processes this country witnesses have become a quinquennial revival or renewal of these promises. This is not to discount the strident growth the country has seen in multiple spheres, but it equally cannot be discounted that we have miles to go to see the smiles on the face of every citizen of this country. The Court now pauses here to ponder on the following lines from the poem "The Poet VIII" by Khalil Gibran:



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"Until when shall human beings honor the dead
And forget the living, who spend their lives
Encircled in misery, and who consume themselves
Like burning candles to illuminate the way
For the ignorant and lead them into the path of
light?"

50. Public law is not driven by sentiments - be of the public or of the media, including the social media. Nor its understanding and administration is controlled by the free speech of the informed or the uninformed, as both are susceptible to personal prejudice, and may be tainted by an undisclosed motivation. Courts, therefore, are not expected to trim their sails the way the societal sentiments flow. They are there to assert their role to uphold the rule of law. It stands between the leviathan State and the citizens, not with any presupposition, but with a sense of duty to uphold the rule of law - a sacrosanct Constitutional duty in that. The following words of Y.V. Chandrachud, CJ in *Mohd Ahmad Khan v Shah Bano* [(1985) 2 SCC 556] are apt here:

"Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable."

51.1 The public trust doctrine implies that the Governments in this democracy are the custodian of public wealth and resources (including public money), which this country is blessed with, and that it ought to manage them as a prudent manager of finances for public good. Fiscal prudence is the soul of fiscal management and is inbuilt in the governance of public affairs. As a prudent manager of public funds it is the duty of the Government to deploy public money where the investment fetches tangible returns to the public at large. It includes welfare measures for the public, such as health, education, housing, transportation, and the list is endless, and also expenditure necessary for the preservation and protection of our public and Constitutional institutions that serve the public. But the basic criterion is that the public expenditure by a Government must be measurable in terms of the benefit it generates for the public. Fiscal indiscipline, with no care to go for a cost-benefit analysis to demonstrate the existence of a public purpose, will be a painful betrayal of the Constitutional faith, which every Government, conscious of its Constitutional duty to govern with a sense of commitment to its people, should refrain from.

51.2 Here it is not out of place to refer to Article 282 of the Constitution, which enables the Union and the States to make grants irrespective of whether the subject-matter of the purpose



falls in the Seventh Schedule, provided that it is for a "public purpose". The bottom line is that all expenditures by the Governments are permitted, be it statutory or otherwise, only if there is a larger public purpose to support it. In *Bhim Singh v Union of India* [(2010) 5 SCC 538], a Constitution Bench of the Supreme Court upheld the transfer of funds under Article 282 to the MPLAD scheme on the ground that the scheme furthered the objectives underlying the directive principles of State policy enshrined in Part IV of the Constitution. In other words, the Court tested the considerations of "public purpose" from the standpoint of Part IV of the Constitution. Even so, the Court clarified that judicial interference was possible where the action complained of was unconstitutional, meaning thereby, that where the requirement of public purpose, which circumscribes the wide powers under Article 282 was absent, the Court was not powerless to interfere.

52. In *Common Cause v. Union of India*, [(2015) 7 SCC 1], the Hon'ble Supreme Court has held:

"7. In the earlier order dated 23-4-2014 [*Common Cause v. Union of India*, (2014) 6 SCC 552], this Court, after holding that reasonableness and fairness consistent with Article 14 of the Constitution would be the ultimate test of all State activities proceeded to hold that the deployment of public funds in any government activity which is not connected with a public purpose would justify judicial intervention. We would like to say something more.

9. Articles 38 and 39 of the Constitution enjoin upon the State a duty to consistently endeavour to achieve social and economic justice to the teeming millions of the country who even today live behind an artificially drawn poverty line. What can be the surer way in the march forward than by ensuring avoidance of unproductive expenditure of public funds."

The context in that case was different, but the content of what is stated is apposite. Thus in all cases, where the public purpose is not so evident and becomes a subject matter of a judicial review, then it becomes necessary for the Government to demonstrate that the intended object of acquisition is useful to the public and to justify the public expenditure involved in it, lest it would be, as held by the Hon'ble Supreme Court, a wasteful expenditure.

53. In *Rajeev Suri Vs Delhi Developmental Authority* [2021 SCC Online SC 7] (popularly known as the Central Vista case), the Hon'ble Supreme Court emphasised the need for judicial scrutiny



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55. In the Central Vista case, the Government was able to demonstrate the public expenditure - public benefit nexus, to justify the expenditure involved in the project. But in this case, where the public purpose involved in the acquisition is not self-evident, and is debatable in law, the Government has not travelled enough to convince this Court that the cost of acquisition of 'Veda Nilayam' bears a nexus to the public benefit to flow out of it. There is not even an attempt to explain the nature of public purpose or how the public at large would benefit by the acquisition. The public trust doctrine apparently



stands grossly breached.

56. Somewhere in the course of his arguments, the learned Advocate General has listed the instances where residences of leaders or other preeminent persons have been converted into memorials. It is not adequately known whether those properties were acquired, or if the court was called upon to decide if they involved any public purpose within the scheme of the statute. Secondly, they are examples merely and hence these instances by themselves cannot be adequate to justify particular acquisition of 'Veda Nilayam'. And, thirdly, and as outlined earlier, India of today is not the Raj of the yesteryear for its administrators to bask under a fallacy that the wealth of the State is the wealth of the ruler. No, it is the wealth of the ruled - The People. It is time that the Governments have accustomed themselves to this Constitutional reality.

57. In the final analysis, this Court is left with little option than to hold that acquisition of 'Veda Nilayam' cannot be said to involve a 'public purpose' in law. The acquisition fails. The fact that an award has been passed is of no consequence. And, the fact that a formal inauguration of Veda Nilayam - the Memorial on 28-01-2021, Vide Orders of this Court in dated 27-01-2021 is equally of no consequence.

PART III PROCEDURAL LAPSES

58. The results are known, but the game is not yet over. The petitioners have listed a few procedural lapses, which according to them, can reach them ashore on their own strength. Of them, two stands out, and the discussion will be confined to them. They are:

(a) That Social Impact Assessment is a farce. The appointment of the SIA Agency and the technical expert in the SIA Committee were not in conformity with the Rules.

(b) No notices issued at any stage of the acquisition, and hence procedural fairness was breached besides violation of principles of natural justice.

59. A short introduction to the scheme of RFCTLARR Act and the Rules framed thereunder may be of assistance in appreciating this part:

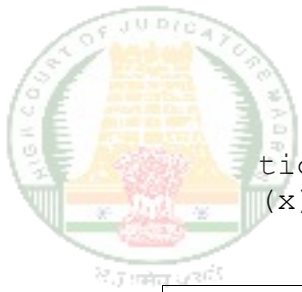
- Broadly, when the Government proposes to acquire land, the process is initiated with a preliminary public notification. Under the Land Acquisition Act, 1894, Sec.4 thereof



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covered it, while in the RCTFLARR Act it is provided in Sec.11. Where however, the RCTFLARR Act differs from its predecessor enactment is that under the present Act, there are certain statutorily prescribed preparatory functions or duties that ought to precede the preliminary notification. They involve a Social Impact Assessment study, evaluating Rehabilitation and Re-settlement package for those who might be affected by the acquisition, constitution of authorities for discharging these preparatory responsibilities etc. Besides, there is an Expert Committee which the Government ought to constitute under the Act, for evaluating the reports of the previously mentioned Committees constituted for the SIA study and the Rehabilitation and Re-settlement proposals. Once the Expert Committee gives its concurrence and clears the proposal for acquisition, the process would go to the stage of issuing preliminary notification under Sec.11.

- Sec.11(1) does not stipulate that personal or individual notices should be issued to those who are interested in the property notified for acquisition. A public notice through dailies is statutorily sufficient. Here it is worth noting that the first proviso to Sec.11(4) provides that a owner of the property on application can obtain exemption of the property from acquisition.
- Under Sec.15, any person interested in the land may object to the preliminary notification and the Land Acquisition Authority is required to enquire into it.
- Once the preliminary notification under Sec.11 is issued, even as the persons interested in the property might raise their objection under Sec.15, the Land Acquisition Authority might proceed to the next stage of entering the property in terms of Sec.12 for surveying and identifying the property proposed to be acquired by their boundaries, and collecting materials/information that may be relevant for taking a final decision on the acquisition. Here, again the proviso to Sec.12 mandates that the Appropriate Government shall not step in to the property in the absence of the owner and without giving him/her 60 days notice to grant the owner an opportunity of being present during inspection.
- If the Statutory scheme thus far discussed is carefully analysed, it makes evident that the scheme of the statute makes a perceptible distinction between the owner of the property and the person interested. While a land owner of a property is defined in Sec 3(r), a 'person interested' is defined under Sec.3(x) of the Act. Going by the defini-



tion, Sec.3(r) is an inclusive definition, whereas Sec.3(x) has a restricted definition. These are now extracted:

Section	Definition
3(r)	"land owner" includes any person :- i. whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or ii. any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force; or iii. who is entitled to be granted patta rights on the land under any law of the State including assigned lands; or iv. any person who has been declared as such by an order of the Court or Authority;
3(x)	"person interested" means :- i. all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; ii. the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007); iii. a person interested in an easement affecting the land; iv. persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and v. any persons whose primary source of livelihood is likely to be adversely affected;



➤ Once hearing on the objections of the 'persons interested' is completed under Sec.15, and if the Appropriate-Government does not find materials to drop the acquisition based on those objections, then, it may proceed to make a declaration under Sec.19 of its need to acquire the land for a public purpose along with a declaration on resettlement of those who would be displaced by the acquisition. This is followed by a public notice under Sec.21 for taking possession of the property and for passing an award.

61. This is the statutory setting in which petitioners' allegations of procedural lapses/violations would be tested. Their allegations can be divided into three parts: First, that pertains to appointment or constitution of various authorities such as the Social Impact Agency, or constituting the District Collector, Chennai as the Appropriate-Government for purposes associated with the RFCTLARR Act, and the latter's power of delegation of his authority to the Revenue Divisional Authority. Second, that which relates to SIA and Rehabilitation and Resettlement package, where the petitioners allege that the authorities do not strictly adhere to the statutory command. Lastly, to the issue of notices - or, non-issue of notices & fairness of procedure. Of them this Court will focus only on the last two, and they will be now considered in the same order.

62. Though both sides strenuously argued this aspect, for the reasons to be disclosed shortly, this Court does not propose to stay on this point for long.

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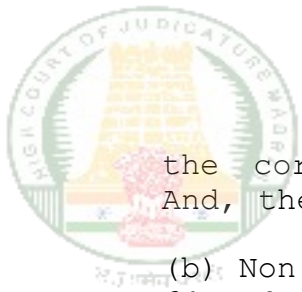


rehabilitation and resettlement is required only where the acquisition involves displacement of families of 'persons interested' in the property acquired including that of its owners.

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- So far as the acquisition of 'Veda Nilayam' is concerned, this a residential building in a residential area, and it has been there for long. And, as on the date of preliminary notification it was unoccupied. This implies, the continued existence of this residential property for a purpose which the Government has contemplated would only involve transfer of ownership merely - transfer from the owner of the property to the Government by a statutory process. And the purpose for which it was acquired involves only a change of user of the building - from a residence to a memorial. A forced transfer of ownership of an existing building hardly can impact the Society, which in the context must be read as the inhabitants of Poes Garden.
- Hypothetically what if Ms. Jayalalithaa herself had executed a Will, or constituted a Trust during her life time, donating her residence to the Government either for her memorial, or for any public charity of her choice? (The Government is informed in this mode there is no public money involved) And, how is this situation different when the Government acquires the same building? The second part is about change of user from a residential purpose to a memorial. This change of user of an existing building at the best may fall within the domain of Town Planning Authority, but at no time it requires a Social Impact Assessment study. And, inasmuch as none are displaced by the acquisition there is hardly any need for providing a resettlement & rehabilitation package. To explain it, even though title or ownership of 'Veda Nilayam' had vested in Deepak and Deepa as Class II heirs of late Jayalalithaa (See Section B, Part I of this order), they are not in actual physical possession of the property. Rehabilitation and Resettlement under the RFCTLARR Act contemplates actual physical displacement of those who are affected by the acquisition, and it will be illogical to extend this to all cases of acquisition.

63. There is little to doubt the settled proposition that when law prescribes mode of doing an act, then it shall be done in the manner prescribed and no other. The question is, where will the provision have application? Hence, where there is no need for its application, or where the application is rendered meaningless and fails to stand the scrutiny of common sense, the procedural prescription does permit deviation. Therefore, to probe into the legitimacy of the SIA Agency constituted or into



the correctness of the SIA study themselves are irrelevant. And, the Government scores a few consolation points here.

(b) Non Issue of Notices & Fairness in procedure:

64. The statutory analysis which this Court has undertaken in paragraph 61 does reveal that except at the solitary stage of entering the property proposed to be acquired by the Authorities for surveying etc., under Sec.12, nowhere the Act has positively stipulated issuance of notices to the land owner. After all with or without individual notices, Deepak mostly, and Deepa a couple of times have registered their objections to the intent of the Government to acquire 'Veda Nilayam'. And, they have been considered by the Land Acquisition Officer even though were not in their favour. Having stated thus, it may also have to be recorded that there appears to be a conscious move by those in charge of acquisition proceedings to drive the 'land owner' to a statutory-redundancy. This is first reflected in the stance taken in the counter of the District Collector where it was asserted that the petitioners are not the owners of Veda Nilayam, and that they are only 'persons interested' under Sec.3(x) of the Act.

65.1 Irrespective of whether any notices were statutorily required to be issued or not, this Court witnesses a few startling aspects in the procedure adopted, which it will struggle to ignore unless its conscience is compromised:

- The facts tabulated in paragraph 5 shows that on 25.06.2019, the Government has published the preliminary notification under Sec.11 of the RFCTLARR Act read with Rule 13 of the TN-RFCTLARR Rules, 2017 in Form-IV. In column 8, the name and address of the 'persons interested' is required to be notified and column 9 is intended for recording the name of the registered holder. Interestingly, if not shockingly, in column 8 of Form-IV of the instant case, it is recorded that the heirs of the registered holder are 'yet to be ascertained'. This is followed by another notification under Sec.11(5) r/w. Rule 14(1) in Form-V, where under, objections to the preliminary notification were invited. In column 5 of Form-V, the name and address of the person interested / registered owner have to be entered. Here again the authorities have recorded that "the legal heir are yet to be ascertained". The final declaration of acquisition dated 03.02.2020 under Sec.19 in Form-VI also carries the same forward.
- The deceased is no ordinary person. She was Ms. Jayalalithaa, a one time matinee idol, who entered politics to slowly graduate to become the Chief Minister of the State, and indeed held that office for three terms. And,



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she passed away when she was still the Chief Minister. It needs no reminder that the Government that was in power at the relevant time when the acquisition of Veda Nilayam was initiated was the very Government that she had left as a legacy for the MLAs of the very political party whose affairs she presided. The world has always known that she was a spinster, and that there was no direct lineal descendants for her. And, she was given a State funeral and her last rites were performed by Deepak, one of the petitioners herein. Is this not a tacit acknowledgment by the political party that was then in power that Deepak was her heir? Still, when Deepak approached the Tahsildar, a lower rung official in the bureaucratic set up for the issuance of a legal heir certificate, the latter refused to issue it vide his proceedings dated 22.09.2017, and directed him to approach the Court. It may be amusing to know that one of the reasons why he refused the legal heirship certificate was that Deepak had not produced the death certificate of late Jayalalithaa !! The amusement is more if it is seen in the context of the counter of the District Collector in defense of the acquisition as extracted in paragraph 7.2 above. Now, irrespective of whether a legal heir certificate issued by a Tahsildar has any conclusive significance for deciding the heirship of a person, and notwithstanding the fact that there was none to dispute the status of Deepak and Deepa, the Tahsildar had chosen to reject it. Was the Tahsildar laboring under a misconception? That seems unlikely since the power of the Tahsildar to hold an enquiry and issue a legal heir certificate to Class II legal heirs is covered by several judgments of this Court. See: M Arumugam v Tahsildar, Madurai [2013 CDJ MHC 6017], N.R Raja v Tahsildar, Madurai [WP MD 15901 of 2018], T.S Renuka Devi v Tahsildar [W.P MD 37214 of 2015], R. Lokesh Kannan v District Collector [WP MD 5586 of 2017], Sudalaimuthu v The District Collector [W.P MD 16708 of 2018] and Indrani Palaniappan v The Tahsildar [W.P 35263 of 2019]. This Court does not want to read too much into it, or rather intends to give the benefit of doubt to the Tahsildar concerned presently.

- Be that as it may, within about two weeks of Tahasildar's proceedings, on 09-10-2017, a certain Pugazhethi in the company of another Janakiraman, both claiming to be the members of the ruling political party, approached this Court and applied for LoA to administer the estate of late Ms. Jayalalithaa, in O.P.D.No.35654 of 2017. This petition was not taken on to the file of this Court as a learned Single Judge of this Court rejected it on a point of maintainability. But these party-men would persist with their claim for LoA, as they would now challenge this or-



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der in OSA 445 of 2018 before the Division Bench. It is extremely suspicious that these men, whose inner party status was no more than party workers, would have filed these proceedings on their own accord. Has not the Government considered it necessary not to take notice it? Does it require a Sherlock Homian intelligence to unravel any breath-taking mystery? Plainly not, for it is an easy pick from a comics: create a roadblock for the petitioners in asserting their ownership over the property, and exploit the judicial process to accomplish it. If the Tahsildar's decision to reject the legal heir certificate to Deepak is now fitted in the context, the needle of suspicion naturally starts tilting towards the motives of the Government. Is this the opening chapter of what may be considered as a poorly drafted game-plan?

65.2 Let the facts be sequentially arranged to obtain greater clarity about the suspected strategy:

- On 16.08.2017, Deepak had moved the Tahsildar for grant of legal heir certificate for him and Deepa. On the next day, on 17.08.2017, the Chief Minister makes a statement on the floor of the House of the Government's intention to convert 'Veda Nilayam' into a memorial for the late Ms. Jayalalithaa. On 22.09.2017, the Tahsildar rejected Deepak's request for a legal heir certificate. On 09-10-2017, two party-men suddenly spring up from nowhere and approach this Court for grant of LoA. And, no sooner than the rejection of Deepak's request by the Tahsildar, on 05.10.2017, G.O.Ms.No.180 was issued in a tearing hurry, granting administrative sanction for the project. Is it a repeat of 'Solomon Grundy'..? Where do these facts lead one to, and what for? Now comes the set of notifications/notices for acquisition, from the preliminary notification under Sec.11 to final declaration of acquisition under Sec.19, in Forms IV, V & VI, in all of which, the authority concerned maintained that the heirs of Ms. Jayalalithaa were yet to be ascertained.
- When Deepak was denied the legal heir certificate he was forced to move this Court in OP.No.630 of 2018 for obtaining LoA and were tied to a legal process. This litigation was unnecessary in law if only the Government had acknowledged the petitioners as Class II heirs of Ms. Jayalalithaa. But, they found themselves stranded between a proceeding before the Court and the acquisition of Veda Nilayam. Has not this situation now enhanced the probability of a hassle-free acquisition as the petitioners are deflected off their course? If this inference is wrong, then what other inferences of better and different quality



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is possible from the course of events that the unassailable documents project? The statements in Forms IV, V and VI that the heirs of late Jayalalithaa cannot be considered innocent statements and must be read in the context of what has been narrated herein above. Quo vadis fairness?

66. Relying on the decision in State of U.P. Vs Keshav Prasad Singh [(1995) 5 SCC 587], the learned Advocate General argued that where there is a public purpose, the Government has the power to acquire even disputed land. Indisputably it can, but in the instant case where is the dispute and who disputed it? What is on view, is that other than the Government or its officials and the planted party-men there were none to dispute the title of the petitioners to Veda Nilayam?

67. The maneuvers adopted have not without their ramification on the rights of the petitioners, which, to re-emphasis, is not a Constitutional right merely, but is a fundamental right to life:

- Under proviso to Sec.11(4) of the RFCTLARR Act, when a preliminary notification for acquisition is published under Sec.11(1), a land owner of a notified land has the right to apply to the District Collector to seek exemption of the land from acquisition. This right is personal to the land owner and accrues only after the preliminary notification. The District Collector may have the power to reject it, but the right to apply for exemption is statutorily provided, and it cannot be denied. In the instant case this is denied to the petitioners. The Government might have misconceived or let itself to be misled into believing that the petitioners might not have been the land owners within the meaning of Sec.3(r) of the Act or might have chosen to be indifferent to the rights of a land owner under the RFCTLARR Act, but it is a chance that it has taken in law, and in an adjudicatory process by the Court it will not be taken lightly.
- The other aspect is about the power of the Appropriate Government under Sec.12 of the Act to enter the property proposed to be acquired for surveying etc. The proviso to it provides that it should be done in the presence of the land owner to procure whom it mandates that 60 days notice should be given to the land owners. Here again in treating the petitioners not as land owners, was there an attempt to treat Veda Nilayam as nobody's property? The worse is yet to come. An Ordinance thereafter came to be



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promulgated inter alia for taking control of the movables and other valuables in Veda Nilayam, and the Government through its officials has entered the building and claims to have taken an inventory of the articles, again in the absence of the owners.

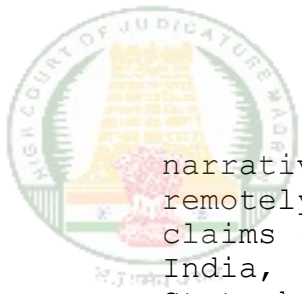
68. Procedural compliance is not a facade or a mask for emasculating procedural fairness. In *State of Orissa v. Mamata Mohanty*, [(2011) 3 SCC 436], the Hon'ble Supreme Court has held:

"The rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority. If the procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision-making process remains bad.

In *Manoj Narula v. Union of India*, [(2014) 9 SCC 1], it was pointed out by a Constitution Bench of the Hon'ble Supreme Court observed:

"...The faith of the people is embedded in the root of the idea of good governance which means reverence for citizenry rights, respect for fundamental rights and statutory rights in any governmental action, deference for unwritten constitutional values, veneration for institutional integrity, and inculcation of accountability to the collective at large. It also conveys that the decisions are taken by the decision-making authority with solemn sincerity and policies are framed keeping in view the welfare of the people, and including all in a homogeneous compartment. The concept of good governance is not a Utopian conception or an abstraction. It has been the demand of the polity wherever democracy is nourished. The growth of democracy is dependent upon good governance in reality and the aspiration of the people basically is that the administration is carried out by people with responsibility with service orientation."

What is, therefore, strikingly apparent from the aforesaid



narrative is that the acquisition proceeding should be even remotely seen as a fiat accompli that it scuttles the possible claims of the land owners. See: Nareshbhai Bhagubhai v Union of India, [(2019) 15 SCC 1]. It is, therefore, obvious that the State has lot to explain the way it handled the procedure in the instant case, and if it was fair and reasonable in procedural compliance mandated by the statute. In Vidya Devi Vs State of H.P., [(2020 2 SCC 569)], the Hon'ble Supreme Court held:

"12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. MIDC [(2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana v. Mukesh Kumar [(2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension."

69. Respect for the statute - its spirit and the soul, and the concern for the rights of the citizens are inalienable facets of Executive fairness, but in the acquisition of Veda Nilayam they are sacrificed. Keenness of the political parties in power to honour their leaders is understandable, but in the present case it appears to have gone awry when it failed to distinguish political leadership from ownership over the property. Excitement can be a killer, and in the instant case it does not appear to have spared even the Government and its machinery. When there is a rule book in place, why should there be a clamour for doing the same thing differently? Assuming there is a public purpose (which this Court has already held in Part II that there is none), it needs to be said that the methods adopted for acquisition are hardly appreciable. Legitimacy of power not backed by legitimate means of exercise can hardly be sustained in public law. The sequitur is that the acquisition of Veda Nilayam fails on yet another ground.



On the course to conclusion:

70. On 27-01-2021, this Court had by an interim order allowed a formal inauguration of Veda Nilayam as a memorial for Ms. Jayalalithaa. This Court however, restrained the Government from opening the doors of the building. It also directed the District Collector, Chennai, to hand over the keys of the building to the Registrar General. This Order was challenged by the Government before the First Bench of this court in W.A.348 to 350 of 2021. The Hon'ble Division Bench has modified the order of this Court only to a limited extent when it permitted the District Collector to retain the keys of Veda Nilayam. The relevance of introducing this fact has significance in the concluding paragraph of this order.

The Verdict:

71. When the acquisition goes, the award passed by the Land Acquisition Authority goes with it. Consequently, the status quo ante has to be restored. Accordingly, this Court passes the following order:

- (a) All the three writ petitions are allowed. This Court sets aside the notices in No.A1/3476/2018 Form-IV dated 25.06.2019, Notice A1/3496/2018 Form-V dated 28.06.2019, Notice No.01, A1/3476/2017 Form-VI dated 04.5.2020, and Public Notices in Rc.A1/3476/2018 dated 19.05.2020. and quashes the G.O.No.180 dated 05.10.2017, and Award No.01 in RC.No.A1/3476/2018 dated 22/7/2020.
- (b) The compensation amount which the Government has deposited in the Court pursuant to the award is liable to be returned with all accrued interest to the Government.
- (c) The District Collector, Chennai, in whose custody the keys of 'Veda Nilayam' is, is directed to hand them over to the petitioners within a period of three weeks from the date of the receipt of copy of the order, which includes a Web copy of the Order.
- (d) The Income Tax Department (6th respondent in W.P.10135 of 2020) is free to proceed for recovering any arrears of tax payable by Ms.Jayalalithaa which is chargeable on her estate as per law.
- (e) Consequently connected miscellaneous petitions are closed. No costs.



Note: This Court has taken a few days short of seven months to pronounce this order. The delay can be explained: Of the seven months Covid and post-covid issues that I went through consumed at least about three months. And, I had to do my research and needed time for analysis.

Sd/-
Assistant Registrar(CS-IX)
dated : 07.12.2021

**Now the Paragraph numbers
are corrected as per order
dated 07.12.2021 made herein**

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ds

To:

1. The Secretary to Government
Government of Tamil Nadu
Tamil Nadu Development and Information Department
St.George Fort, Chennai - 600 009.
2. The District Collector
Chennai Collectorate
'Singaravelan Maligai'
62, Rajaji Salai, Chennai - 600 001.
3. The Land Acquisition Officer
cum Revenue Divisional Officer
South Chennai Revenue Division
Guindy, Chennai - 600 032.
4. The Tahsildar
Mylapore Taluk
Mylapore, Chennai - 600 004.
5. The Chief Secretary to Government
State Government of Tamil Nadu
Secretariat, Fort St.George,
Chennai - 600 009.



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6. The Secretary to Government
Revenue Department
State Government of Tamil Nadu
Secretariat, Fort St.George
Chennai - 600 009.
7. The Secretary to Government
Public Works Department
State Government of Tamil Nadu
Secretariat, Fort St.George
Chennai - 600 009.
8. The Deputy Commissioner of Income Tax
Central Circle II (2)
New No.46, Old No.108, Mahatma Gandhi Road
Nungambakkam, Chennai - 600 034.
9. The Chairperson,
Puratchi Thalaivi Dr.J.Jayalalithaa Memorial Foundation
St.George Fort, Chennai - 600 009.

+3ccs to Mr.S.L.Sudarsanam Advocate, S.R.No.60976

+1cc to M/s.K.G.Usha Rani, Advocate, S.R.No.61025

+1cc to the Government Pleader, S.R.No.61077

W.P.Nos.9285 & 10135 of 2020
and
W.P.No.1708 of 2021

KSM(CO)
SU(07/12/2021)