



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.12697 of 2022

1.G.Gouthaman
2.P.R.Ramanan
3.S.Vijay Narayanan

.. Petitioners

Vs

1. The State of Tamil Nadu,
rep. by its Secretary
(In the rank of Additional Chief Secretary)
Department of Tourism, Culture and
Religious Endowments,
Government of Tamil Nadu,
Fort. St. George,
Chennai - 600 009.

2. The Principal Secretary and the Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uttamar Gandhi Salai,
Chennai - 600 034.

3. Chennai Metro Rail Limited (CMRL),
rep. by its Managing Director,
Poonamallee High Road,
Koyambedu, Chennai-600 107.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of declaration, declaring that (i) Mylai Sri Kapaleeswarar Temple (ii) Vadpalani Murugan Temple (iii) Vadapalani Sri Vengeeswarar Temple (iv) Vadapalani Sri Alagar Perumal Temple (v) Virugambakkam Sri Sundaravardharaja Perumal Temple (vi) Valasaravakkam Sri Velveeswarar Temple (vii) Poonamallee Sri Thirukachi Nambigal and Sri Varadaraja Perumal Temple (viii) Poonamallee Sri Thirukachi Nambigal and Sri Varadaraja Perumal Temple Tank which are impacted under the Corridor 4 of the Phase II of the Chennai Metro Rail Project, as ancient monuments and Heritage Structures under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 read



with Article 26 of the Constitution of India.

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For the Petitioner : Mr.M.Ramamoorthi

For the Respondents : Mr.R.Shunmugasundaram
Advocate-General
assisted by
Mr.P.Muthukumar
State Government Pleader
for respondent No.1

: Mr.N.R.R.Arun Natarajan
Spl. Government Pleader (HR &
CE)
for respondent No.2

: Mr.Jayesh B Dolia
Standing Counsel
for respondent No.3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed to seek a declaration to declare that the temples (i) Mylai Sri Kapaleeswarar (ii) Vadpalani Murugan (iii) Vadapalani Sri Vengeeswarar (iv) Vadapalani Sri Alagar Perumal (v) Virugambakkam Sri Sundaravardharaja Perumal (vi) Valasaravakkam Sri Velveeswarar (vii) Poonamallee Sri Thirukachi Nambigal and Sri Varadaraja Perumal, which may be impacted under Corridor 4 of Phase II of the Chennai Metro Rail Project, are ancient monuments and heritage structures under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 read with Article 26 of the Constitution of India and, therefore, in the light of the judgment of a Division Bench of this Court in Suo Motu W.P.No.574 of 2015 and W.P.(MD) No.24178 of 2018 decided by a common order dated 07.06.2021, the temple lands may not be subjected to alienation contrary to the wish of the donor and, accordingly, the lands shall always remain with the temples and that the public purpose theory shall not be invoked in cases of temple lands, over which the interest of the community people of the religious denomination generally rests.

2. Learned Advocate-General submitted that there is no proposal to affect any of the monuments or temple structures,



rather, they would be protected. For the purpose of Metro Rail Project only vacant lands and lands used for commercial purpose may be used that too after acquiring it. Thus, without taking the process of law, the lands under the temples would not be acquired. In view of the above, the writ petition may be closed, because it was basically filed apprehending damages to the monuments and heritage structures under the the Ancient Monuments and Archaeological Sites and Remains Act, 1958 [for brevity, "the Act of 1958"] read with Article 26 of the Constitution of India.

3. Learned counsel for the petitioner submitted that if the respondents have no proposal to impact any of the monuments and heritage structures, the statement aforesaid may be recorded, however, acquisition of lands or invocation of Section 34 of the Hindu Religious and Charitable Endowments Act, 1959 [for short, "the Act of 1959"] would not be permissible in the light of the judgment of the Division Bench of this Court in the suo motu writ petition cited supra. Thus, the writ petition may be allowed with a direction to the respondents not to acquire or affect lands under the temples either by invoking the provisions of the Land Acquisition Act [Central Act or State Act] and at the same time, not to invoke Section 34 of the Act of 1959.

4. We have considered the submissions made by learned counsel for the parties and also perused the materials available on record.

5. The writ petition was filed apprehending damage to the ancient monuments and heritage structures of the temples and that too in violation of the Act of 1958 and Article 26 of the Constitution of India.

6. A categorical statement has been made by learned Advocate-General that there is no proposal to affect any temple structures or monuments. The proposal is only to use vacant lands under the temples or commercial area for the purpose of the Metro Rail Project. The utilisation of lands may be either by invoking the provisions of the Land Acquisition Act or by taking the process as given under Section 34 of the Act of 1959.

7. In view of the statement aforesaid, we need to analyse the judgment of the Division Bench of this Court in the suo motu writ petition cited supra. The relevant paragraph referred by learned counsel for the petitioner is paragraph 33, which is quoted hereunder for ready reference:

"33. The state Government or the Commissioner of the HR&CE department, who are the Trustee/administrator of the temple lands, shall not alienate or give away the lands contrary to the



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wish of the donor. The lands shall always remain with the temples. the public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests."

8. Paragraph 33 quoted above restricts alienation or giving away the lands contrary to the wish of the donor and with further observation that the public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests. The direction above needs to be analysed in the light of the provision of Section 34 of the Act of 1959 so as the provision of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997.

9. Section 34 of the Act of 1959 is quoted thus:

"34. Alienation of immovable trust property.— (1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by the Commissioner.

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation.— Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, the Commissioner may impose such conditions and give such direction, as he may deem necessary regarding the utilization



of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

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(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of the publication of the order, appeal to the Court to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

(5) Nothing contained in this section shall apply to the imams referred to in Section 41."

10. At this stage, it would further be relevant to refer the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 [for short, "the Act of 1997"]. Section 3 of the Act of 1997 is quoted for ready reference:

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

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



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

11. We may first refer to Section 34 of the Act of 1959 quoted above to analyse the direction given by the Division Bench of this Court in paragraph 33 of the suo motu writ petition (supra). It is settled law that any judgment of the Court running counter to any statutory provision would be per incuriam, as has been held by the Apex Court in the case of Dr. Shah Faesal and others v. Union of India and another, (2020) 4 SCC 1.

12. If a Court issued direction going contrary to the statutory provision, then such direction is to be treated as per incuriam. It is more so when the Court has power to declare any provision as ultra vires, if it is hit by the provisions of the Constitution of India or other statutory provisions. But unless it is so declared as ultra vires, it cannot be nullified by a direction and such direction given is to be treated as per incuriam. In the light of the aforesaid, what will prevail is the provision of law, that is Section 34 of the Act of 1959 and Section 3 of the Act of 1997. Thus, the provisions having not been declared as ultra vires, the competent authorities are empowered to exercise the said provisions. Therefore, it needs to be clarified that if the direction quoted in paragraph 33 of the judgment in the suo motu writ petition cited supra runs counter to any of the statutory provision, it may be treated as per incuriam.

13. In view of the finding recorded above, we hold that if the lands belonging to the temples, like vacant lands, or used lands for commercial purposes are required, it can be acquired for public purposes by applying the provisions of law. In doing so, it has already been admitted that no heritage structures or ancient monuments of the temples would be affected.

14. With the aforesaid clarification and direction, the writ petition is ordered to be closed. There will be no order as to costs. Consequently, W.M.P.Nos.12148 and 12152 of 2022 are closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar



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1. The Secretary
State of Tamil Nadu,
(In the rank of Additional Chief Secretary)
Department of Tourism, Culture and Religious Endowments,
Fort. St. George,
Chennai - 600 009.
2. The Principal Secretary and the Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uttamar Gandhi Salai,
Chennai - 600 034.
3. The Managing Director,
Chennai Metro Rail Limited (CMRL),
Poonamallee High Road,
Koyambedu, Chennai-600 107.

+1cc to Mr.Jayesh B Dolia, Advocate, S.R.No.37293

W.P.No.12697 of 2022

GSM(CO)
CT/29/06/2022