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W.P.No.4190 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **S.M.SUBRAMANIAN**

W.P.No.4190 of 2023
and W.M.P.No.4224 of 2023

Sri Arulmigu Thiruvaleeswarar Thirupurasundari Temple
rep by Hereditary Trustee Dr.Ravi K.Viswanathan,
S/o.Kasi Viswanathan,
No.24/17, Wallace Garden 3rd Street,
Chennai – 600 006.

.... Petitioner

Vs

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



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5.The Executive Officer,
Arulmighu Thiruvaleeswarar
Thirupurasundari Temple,
Poonamallee High Road, Nerkundram,
Chennai

... Respondents

[R5 suo motu impleaded vide order
dated 14.02.2023]

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Mandamus directing the respondents 1, 2 and 4 to restore the Temple Tank and re-convey the Temple kulam measuring an extent of 16,650 sq.mtrs, in Survey No.31, Nerkundram Village, Ambattur Taluk, Thiruvallur, in favour of Arulmighu Thiruvaleeswarar Thirupurasundari Temple.

For Petitioner : Mr.R.Thiagarajan

For R1 and R2 : Mr.G.Krishna Raja,
Additional Government Pleader.

For R3 and R5 : Mr.N.R.R.Arun Natarajan,
Spl. Government Pleader [HR&CE].

For R4 : Mrs.Rita Chandrasekar.

ORDER

The Writ Petition on hand has been instituted to direct the respondents 1,2 and 4 to restore the Temple Tank and re-convey the Temple kulam measuring an extent of 16,650 sq.mtrs, in Survey No.31, Nerkundram Village, Ambattur Taluk, Thiruvallur, in favour of



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Arulmighu Thiruvaleeswarar Thirupurasundari Temple.

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2.The petitioner states that Dr.Ravi K.Viswanathan is the Hereditary Trustee of Arulmighu Thiruvaleeswarar Thirupurasundari Temple, situated at Poonamallee High Road, Nerkundram, Chennai. The petitioner claims to be a private temple originally owned and possessed by Mrs.Chandrammal and subsequently she sold the property along with the temple in favour of Mr.Pon Irula Pillai. Mr.Pon Irula Pillai conveyed the property along with the temple by virtue of a registered deed of sale dated 08.04.1941 registered as Document No.798 of 1941 on the file of the Sub Registrar, Saidapet in favour of the grandfather of the petitioner, Mr. T.V.Neelamegam Pillai.

3.The grandfather of the petitioner Mr.T.V.Neelamegam Pillai was in absolute possession and enjoyment of the said property ever since the date of his purchase, he was paying salary to the Archakar and maintaining the temple. The grandfather of the petitioner executed a Will dated 02.06.1952 appointing his eldest son Mr.Kasi Viswanathan as the Sole Hereditary Trustee of this temple. After the demise of Mr.T.V.Neelamegan Pillai, probate was obtained from the High Court



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and thereafter Mr.N.Kasi Viswanathan continued as Trustee of the temple. Mr.N.Kasi Viswanathan leased out a part of the property in favour of M/s.Geethanjali Tubes and subsequently initiated legal proceedings. After the demise of Mr.N.Kasi Viswanathan, his brother Mr.Shanmugavel was appointed as a Sole Trustee of the temple by virtue of a registered Will dated 03.07.2002 executed by Mr.N.Kasi Viswanathan. After his demise, probate was obtained in O.P.No.540 of 2004. The trustee Mr.Shanmugavel was managing the affairs of the temple for about 17 years. The District Collector started interfering with the management of the temple since 1996 and a suit was instituted in O.S.No.774 of 1996 on the file of the District Munsif Court, Poonamallee and the judgment and decree dated 10.12.2002 granting permanent injunction came into force. However, the said judgement and decree was not followed by the 3rd respondent and he continued to interfere into the management of the temple. Again a suit was instituted in O.S.No.157 of 2010 on the file of the Sub Court, Poonamallee and an interim order of Status Quo has been granted in the year of 2011.

4.The learned counsel for the petitioner mainly contended that the respondents 1 and 3 had erroneously informed the 4th respondent, Chennai Metro Rail Limited that the subject property is a temple



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poromboku land and the High Level Committee has wrongfully authorised the Chennai Metro Rail Ltd to utilise the said land for the purpose of developing the Chennai Metro Rail projects. Based on the permission granted by the High Level Committee of the Government, the Chennai Metro Rail Limited is utilising the subject property for storing materials/dumpyard.

5.The learned counsel for the petitioner reiterated that the suit instituted in O.S.No.157/2010 is now pending on the file of the Sub Court, Poonamallee. The suit was instituted under Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. During the pendency of the suit, the Government issued an order in G.O.Ms.No.46, Planning Development and Special Initiatives, dated 02.02.2011 permitting the Chennai Metro Rail Limited to occupy the land for the purpose of developing the Metro Rail project.

6.Attention of this Court was drawn by the learned counsel for the petitioner that the subject property is classified as “Kulam”, which is a water body being utilised by the temple for several years and therefore,



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the permission granted by the High Level committee and the consequential Government Order issued in G.O.Ms.No.46, Planning Development and Special Initiatives, dated 02.02.2011 is illegal and untenable.

7.The Writ petitioner filed W.P.No.12772 of 2011 to quash the order dated 03.05.2011 issued by the Commissioner, HR&CE Department and to direct the respondents to restore the lands in favour of the petitioner by removing the men and the materials stored by Chennai Metro Rail Limited. This Court considered the issue on merits and made a finding as follows:

“11.Considering all the above facts, in so far as permission granted by the second respondent in favour of the third respondent, I hold that it is valid and it cannot be questioned by the petitioner at this point of time especially when the petitioner has filed a statutory suit before the Sub Court, Poonamallee and the same is pending. Therefore, depending on the outcome of the civil suit, the issue of title shall be decided. It is further made clear that the District Collector/fourth respondent herein alone shall fix the value of the lands in question, after giving sufficient opportunity to both the petitioner, second respondent and the third respondent and forward the proposal for the same to the Government. Thereafter, the amount of compensation that may be fixed by the Government shall be deposited to the credit of



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O.S.No.157 of 2010 before the Sub Court, Poonamallee. The compensation amount shall be disbursed after the suit is adjudicated upon by the Sub Court, Poonamallee. In view of the above, the order dated 05.12.2011 passed by the District Revenue Officer, Thiruvallur, fixing the value of the land without notice to the petitioner or the second and third respondent will not have any binding effect and the same need not be considered by the District Collector/fourth respondent herein at the time of fixing the value for the lands. In other words, the fourth respondent shall independently fix the value for the lands in question without taking note of the earlier orders passed by his subordinate officers fixing the value for the land.”

8.The contention of the learned counsel for the petitioner is that the land belonging to the temple has been illegally taken away and the High Level Committee and the Government has handed over the same for Chennai Metro Rail Limited for the purpose of developing the project without even considering the fact that it is a temple property and being utilised as pond for religious purpose. The petitioner has filed another Writ Petition in W.P.No.12507 of 2017 and this Court passed orders on 15.02.2018 as under:

“4.In the final analysis this case falls within a narrow space: Where the demarcating line between that portion of the land which has been acquired and that which was outside the earlier acquisition. If this is known, both sides peace in the minds



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of the parties can be restored, though petitioner's title to whatever property claims has to be decided by the civil court. It is therefore, necessary for the fourth respondent along with the second respondent to fix of determine the southern boundary of Survey No.29 of Nerkundram Village and to demarcate the extent of 12425 sq.mtrs allotted vide G.O.Ms.No.46 dated 02.02.2011 with the help of the revenue officials. Thus, the respondents second and fourth shall do it after putting the petitioner on notice. The petitioner shall lend its fullest co-operation and at no time shall obstruct any activity as is presently directed by this Court. There shall not be any more embargo operating against the Chennai Metro Rail Limited to proceed with the project. In case of any dispute as to where demarcating line ought to be, the petitioner is well advised to resort to appropriate remedies before the civil court as this Court may not be able to resolve it.”

9.The learned counsel appearing on behalf of the Chennai Metro Rail Limited/4th respondent made a submission that the subject land was a vacant land and there was no classification as “Government Poromboku”. The Government poromboku land was granted for the purpose of Chennai Metro Rail project by the Government and necessary permissions and approvals were obtained. The Chennai Metro Rail project is in progress and the subject land which is a Government poromboku is being utilised for the purpose of Chennai Metro Rail project on account of the interim order granted in the present Writ



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Petition and further developments are unable to be made in the particular location. It is contended that the land belongs to the Government and as far as Survey No.30 is concerned, it belongs to temple as per the petitioner and temple is now under the control of the HR&CE Department. Thus, the petitioner has no locus to quash the orders passed by the Government and the permission granted by the High Level Committee for the purpose of developing the Chennai Metro Rail project.

10.The learned Special Pleader appearing on behalf of the HR&CE Department made a submission that the petitioner and their family members initiated proceedings under Section 63(a) and (b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, in the matter of Sri Arulmigu Thiruvaleeswarar Thirupurarsundari Temple. The Joint Commissioner adjudicated the issue in O.A.No.36 of 1978 and dismissed the claim of the petitioner and his family members on merits, The temple was declared as public temple and taken over by the HR&CE Department and an Executive Officer was appointed to control the administration of the temple. As of now, the temple is being administered by the petitioner on account of the Interim Order granted by the Civil Court. However, the Department dismissed the claim of the petitioner in



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order dated 19.09.2008 itself. The petitioner preferred an appeal before the Commissioner under Section 69(1) of the HR&CE Act. The said appeal was also dismissed by the Commissioner and challenging the said order, the petitioner filed a Civil Suit in O.S.No.157 of 2010 which is now pending on the file of the Sub Court, Poonamallee. The HR&CE Department has not recognised the petitioner as hereditary trustee so far. The temple has already been declared as public temple. By virtue of the interim order, the petitioner is looking after the administration of the temple. This being the factual position, the learned Special Government Pleader reiterated that the petitioner has no locus to claim any compensation for the permission granted by the High Level Committee and the Government for the purpose of utilising the subject land for developing Chennai Metro Rail project.

11.Issues relating to the claim of the petitioners are sub judiced before the Sub Court, Poonamallee. The petitioner preferred an appeal under Section 70 of the HR&CE Act and the Sub Court has granted an interim order in the year of 2011 and based on the interim order, the petitioner is looking after the administration of the temple. However, the temple has already been declared as public temple. The interim order of



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Status Quo granted in I.A.No.723 of 2010 in O.S.No.157 of 2010 dated 25.02.2011 is in force. The main issue relating to the claim of the petitioner is sub judiced.

12.The petitioner has submitted the photographs which would reveal that the land has not been utilised as pond as of now. The Chennai Metro Rail Limited has taken possession of the entire property pursuant to the Government orders and utilised the land for the purpose of developing the project. Though the learned counsel for the petitioner pointed out that the subject land has been classified as “Kulam”, there is no such indication on seeing the photographs produced by the petitioner, more so, the Chennai Metro Rail Limited has already taken possession of the subject land and utilising the property for the purpose of developing the Chennai Metro Rail project. Mere pendency of a suit is not a bar for initiation of acquisition proceedings. The suit under Section 70 of the HR&CE Act was instituted prior to the acquisition of the land by the Government for the benefit of the Chennai Metro Rail Limited. The Government granted permission on the ground that the subject land is Government Poramboke. Based on the permission, the Chennai Metro Rail project has commenced and the same is in progress.



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13.The Chennai Metro Rail project is a public project made for the benefit of the public at large. The subject land and the claim made by the petitioner is to be considered in the pending suit filed under Section 70 of the HR&CE Act. Regarding the compensation or otherwise, the same is to be considered only if the petitioner is able to establish their title and ownership in the manner known to law. As of now, the land was allotted to the Chennai Metro Rail Limited who is in the process of developing the project. The High Level Committee and the Government has granted permission to develop the project. It is needless to state that for getting compensation, a person has to establish title and ownership under the provisions of the Land Acquisition Act.

14.The learned Special Government Pleader appearing on behalf of the HR&CE Department on verifying the e-Court status made a submission that the suit filed by the petitioner in O.S.No.157 of 2010 was dismissed for default on 14.07.2023.

15.This being the factum, the public projects cannot be stalled and more so, the petitioner is yet to establish their rights and title regarding



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the subject property. The Government has already handed over the property to the Chennai Metro Rail Limited for developing the Chennai Metro Rail projects and all necessary permissions were granted. The Chennai Metro Rail Limited has taken possession of the subject property in the process of developing the Metro Rail project. Thus, it is for the petitioner to establish their title or other rights for the purpose of grant of compensation or otherwise. As far as the relief sought for in the present case is concerned, the subject land remains as a vacant land and there is no indication or otherwise that the subject land has been utilised as Kulam by the temple and therefore, the relief as such sought for in the present Writ Petition stands rejected.

16. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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