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W.P.No.2702 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.2702 of 2019

Revoor Padmanabha Chetty's Educational Trust,
Represented by its Managing Trustee and Correspondent
R.Prabhakar

... Petitioner

Vs.

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2.The Tahsildar,
Thiruvottiyur Taluk,
Thiruvottiyur.

3.The District Revenue Officer/Legal Officer,
Chennai Metro Rail Limited,
CMRL Depot, Admin Building,
Poonamallee High Road,
Koyambedu, Chennai – 600 107.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India in the nature of Writ of Certiorarified Mandamus, calling for the records of the



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1st respondent in his order dated 06.08.2018 made in Na.Ka.No.26753/2018/A1 dismissing the Appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act and quash the same and directing the 3rd respondent to pay compensation for the property acquired in lands comprised in T.S.No.145/1 and 145/2 admeasuring 2.0 Sq mts out of 350 sq mts, T.S.No.146 admeasuring 43.0 sq mts out of 170 sq mts and T.S.No.144 admeasuring 38.5 Sq mts out of 543 sq mts situated at Sathangadu Village, Manali Sub Taluk, Thiruvottiyur Taluk, Thiruvallur District as well as the structural cost of the schools and charities buildings.

For Petitioner	: Mr.A.Govindasamy
For R1 and R2	: Mr.A.Selvendran Special Government Pleader
For R3	: Mr.Jayesh B.Dolia Senior Counsel for Mr.Aditya Chandramouli for CMRL

ORDER

(Order of the Court delivered by S.M.SUBRAMANIAM,J.)

The writ on hand has been instituted to quash the order dated 06.08.2018 passed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 and further to direct Chennai Metro Rail Limited to pay compensation for the lands acquired for Metro Rail Project.



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2. The petitioner is a Trust claims compensation on the ground that the property acquired in lands comprised in T.S.No.145/1 and 145/2 admeasuring 2.0 Sq mts out of 350 sq mts, T.S.No.146 admeasuring 43.0 sq mts out of 170 sq mts and T.S.No.144 admeasuring 38.5 Sq mts out of 543 sq mts situated at Sathangadu Village, Manali Sub Taluk, Thiruvottiyur Taluk, Thiruvallur District as well as the structural cost of the schools and charities buildings.

3. It is not in dispute between the parties that the subject property had already been taken possession and exploited for the purpose of developing Chennai Metro Rail. The petitioner/Trust claims compensation on the ground that the land was classified as 'Natham Poramboke'. Therefore, the land not absolutely vest with the Government. Thus, they are entitled for compensation. The main ground raised is that Natham land do not vest with the Government. Therefore, the occupier of 'Natham Poramboke' is entitled for compensation. It is also admitted that no Patta has been granted in favour of the petitioner/trust.



4. In this context, Mr.Jayesh B.Dolia, learned Senior Counsel appearing on behalf of the 3rd respondent/CMRL would submit that the petitioners are not holders of Patta. Therefore, the classification of 'Natham Poramboke' continues as on the date. The Chennai Metro Rail Limited has taken possession and exploited for developing CMRL project. Further 'Natham Poramboke' is a vacant land, which is to be used for residential purpose by granting assignment to the eligible persons, in accordance with the Board Standing Orders.

5. Pertinently, the resources of the State, including lands are to be utilised for the benefit of landless poor persons in an equal manner. 'The landless Poor person' has been defined under the Board Standing Order that means a person who owns a total extent of less than 1.21.5 Hectares, if dry or a total extent of less than 60.5 ares if wet. "Poor person" is one whose family income does not exceed Rs.12,000/-p.a.. Therefore, even for allotting 'Natham Poramboke' lands in favour of landless poor person, the Competent Authorities are bound to ascertain the eligibility of the persons and assign smaller extent of land, so as to ensure equal distribution of such lands for construction of residential house to the poor landless persons.



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6. Learned Counsel for the 3rd respondent would rely on the Judgment of the Hon'ble Division of this Court in the case of ***“P.Indira Prasad Vs. The State of Tami Nadu, represented by its Secretary, Revenue Department*** reported in ***2014 SCC online Mad 2267*** wherein the following observations are made:

“5. We do not find any merit in these writ petitions. A perusal of the impugned order would show that as per the records, the lands have been classified as circar poramboke. It is seen that the Town Survey Resiter shows the classification of the land as a circar poramboke. Even assuming that the lands are Grama Natham lands, they can only be used for residential purpose. Admittedly, in all these cases, the petitioners have put up commercial buildings, Therefore, the authorities have rightly held that the petitioners do not have any right over the properties, which are subject matter of the proceedings”

7. Mr.A.Selvendran, learned Special Government Pleader would state that ‘Natham Poramboke’ cannot be exploited for commercial purposes. It is to be regulated by the Government by assigning smaller extent for putting up residential uses, after assigning to eligible persons. In the present case, the subject property had been utilised by the



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petitioner/Trust for commercial purposes and no regular Patta had been granted in the name of the petitioner/Trust. The subject land remained as 'Natham Poramboke'. Therefore, for all purposes the petitioner was an encroacher of 'Natham Poramboke' land. Therefore, the question of grant of compensation would not arise at all.

8. We have considered the Judgments on the subject, since there are certain ambiguities raised before this Court then and there that Natham lands do not belong to Government, but vest with the occupier absolutely. In order to eradicate the the said concept, we have considered the legal position, including the origin and definition of lands and definition of Grama Natham lands. The relevant portions of the order passed in W.P.Nos.7051 and 7052 of 2017 dated 15.09.2023 are extracted as hereunder:

48. -Grama Natham- has been defined in the Law

Lexicon as follows:~

?"Ground set apart, on which the house of a villager may be built?."

49. -Grama Natham- is the village habitation, where the land holders may build houses and reside.



They are also known as -House Sites- (Manai). They were classified as -Grama Natham- to differentiate from Inam lands, Ryotwari lands, Pannai lands and Waste lands, while later vested with the Government, the -Grama Natham- did not vest with the State.

50. As far as the Corporation limits and Municipal limits are concerned, the Government imposed ban for assignment of -Grama Natham- lands and in many cases, the Government has reclassified the -Grama Natham- lands as -Government Poramboke- and in such circumstances, the occupants are not entitled to claim patta or right over the property.

51. If the Natham is unoccupied, it will be classified as a -Poramboke Natham-. Where such -Poramboke Nathams- are concerned, the Government acts as a custodian, and may allocate the piece of land to an individual, only for the construction of houses.

52. The Government Order has provisions for ? encroachments? on poramboke land. A penalty is levied on encroachments on poramboke land, which also acts as a record of occupancy (because it makes them visible on an official register). It's called a B~memo and is



issued by the village panchayat or the government agencies under whose control the poramboke land lies. Although Tahsildars are supposed to act to remove encroachments within three months of the B~memo being issued (pending appeals), it has been observed that the memo is often used as a proof of occupancy.

53. According to Government Order issued, no poramboke land shall be used for any purpose other than that for which it was originally intended except with the prior approval of the Collector? (G.O. [Ms] No.317, Rural Development [C4], dated December 6, 2000). In case it is not required for the purpose originally intended, it may be used for any other specified public purpose?, in which case the panchayat must publish the notice in the village and invite objections to its proposed use of the poramboke land. The proposal, along with any objections, must then be submitted to the district collector, who will take the final call.

54. Poramboke land is often compared with -Grama Natham-. ?Poram? means outside, and ?boke? means revenue record. Hence the word, -poramboke-,



can be defined as land, which lies outside revenue records. By such a definition, any piece of land can be classified either as a privately-owned Patta land, -Government Poramboke- land or -Grama Natham land-. Although -Grama Natham- can be used for building a house, there is always a risk of litigation when the Government needs the land for its projects.

55. -Grama Natham- lands are house sites, and must be actively used by the land owner. If the -Natham- is unoccupied, it will be classified as a -Poramboke Natham-. Where such -Poramboke Nathams- are concerned, the Government acts as a custodian, and may allocate the piece of land to an individual. Hence, -Grama Natham- may not be an ideal investment if the buyer does not have intention to build a house and reside in it.

56. Grama Natham lands cannot be used for commercial activities. A joint venture to construct an apartment complex on such a land is treated as a commercial activity. Any activity that does not clearly show the intent of the owner of a -Grama Natham- to reside on the land can be classified as a commercial



activity. In June 2011, a judgement was passed in the Madras High Court on a joint venture project built on a -Grama Natham- land where one owner had entered into a joint venture to construct stilt + 4 floors of an apartment complex. Since the apartment was built on a -Grama Natham- land, the Madras High court ruled that this activity could be classified as a commercial activity.

NEED FOR UNIFORMITY IN NOMENCLATURE WITH RESPECT TO -NATHAM- LANDS

57. The Government has announced that the nomenclature with respect to lands will be changed to reflect the difference between private and Government ownership. As -Natham- land records have adopted different nomenclature for different areas, the Government has found an urgent need to bring in uniformity in these records. This change will have to be brought to all -Natham- land records of different places excluding Chennai.

58. -Natham- lands belongs to no one. There is no legal proof of the ownership of such a land. -Grama Natham- land can only be used for residential purposes



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and not commercial. There is no surrounding social infrastructure and almost negligible scope of development in future. The extract of Natham chitta from Tamil Nilam will be treated as a valid and legal document. Hence the necessary changes have to be made. When the land is titled as Government~manai, it leads to a perception that the public may be encroaching on private property. But that is not the case, as many land holdings are private holdings within the -Natham- land settlement. This particular change will lead to all -Natham- lands falling under two categories of ?Ryotwari Manai? and ?Sarkar Poromboke?. This will ensure uniformity and ease confusion between different names for -Natham- lands.

59. Pertinently, in Chinnathami Goundan vs. Venkatasubramania Iyer [1939 MWN 207], Wadsworth J., dealt with unoccupied village site and it is held as follows:~

?I am of opinion that by the recognised practice of this Presidency ~ excluding areas with a Special Revenue law such as Malabar ~ the control of unoccupied village site land vests in the proprietor whoever he may be. In Ryotwari areas that control is exercised by the



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Government in the Revenue Department by means of the grant of house site Pattas without which occupation by an individual villager would be unauthorised. In Zamindari areas that control is exercised by the Zamindar. In a Shrotriem village not falling under the Estates Land Act, I am of opinion that according to the common practice of this Presidency the control of such unoccupied village site vests in the Shrotriemdar. My attention has been drawn to the decision of a Bench of this Court in Venkataramana Sivan v. Secretary of State for India (1), which is a case arising out of a whole Inam village wherein the Government claimed the right to penalise an unauthorised occupation of a cremation ground poramboke. It was held in that case that the Government was vested with the right of protecting such communal ground for the benefit of the community and there is an observation in the judgment of Spencer, J. To the effect the Government is the custodian of the rights of the public in lands such as sites for Pagodas, burning grounds, threshing floors, cattle stands, unassigned house sites and backyards. The suggestion is that the legal title vests in the Government in trust for communal purposes?..?



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60. *In the present case, the title has not been established by the petitioner-s vendor except by stating that they were having uninterrupted possession and enjoyment of the land. It is not stated, whether the petitioner-s vendors were granted assignment of the subject land by the Government. The statement in the Sale Deed would be insufficient to prove the title. The said statement itself is doubtful in view of the fact that the executants of the Sale Deeds of the year 1995 belonged to the same family or the relatives and they made statements that they were in uninterrupted possession of the land without any assignment from the Competent Authorities. More~so, there was an absolute ban during the relevant point of time and the lands earlier classified as -Grama Natham- were reclassified as -Sarkar Poramboke ? Grama Natham- on account of urbanisation. The urban belt areas urbanised no more remain as villages. On urbanisation, the land values were sky~rocketing and the Government thought fit to protect such -Grama Natham- lands and accordingly imposed ban and reclassified the lands as -Sarkar Poramboke-.*

61. *That being the factum, any patta or*



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assignment made by the Revenue Authorities are invalid and no person can claim title over such -Government Poramboke- lands. Thus the manner in which the Sale Deeds were executed in the year 1995 by the petitioner-s vendors create serious doubt regarding their occupation of -Grama Natham- lands during the relevant point of time. The Koyambedu area and nearby areas were classified as -Grama Natham- before being declared as Chennai Built Area and the ban imposed was extended by the Government in G.O.Ms.No.1135, dated 17.03.1962. The Koyambedu area is lying within 32 kms of Chennai City limits and therefore, the lands falling within the Chennai City limits, cannot be assigned nor patta can be issued by the Revenue Authorities on the basis of the statement that the persons are in occupation of the subject land. Presuming that persons are in occupation of -Government Poramboke- lands, they are liable to be evicted by invoking the provisions of the Tamil Nadu Land Encroachments Act, 1905, since the said lands were reclassified as -Government Poramboke-. Once it is reclassified as -Government Poramboke- lands, then the provisions of the Land Encroachments Act, 1905 can be applied and the encroachers are liable to be



evicted.

62. *The impugned Government Order issued in G.O.Ms.No.139, Planning Development and Special Initiatives Department, dated 27.08.2010 states that the subject land is in Koyambedu in Chennai District, Egmore~Nungambakkam Taluk, Koyambedu Village is a -Grama Natham- land and accordingly it was transferred for developing Chennai Metro Rail Project. Though the Government Order transferring the subject lands were passed in the year 2010, the said order is challenged by the writ petitioner in the year 2017 in the present writ petitions. In the earlier writ petition, the petitioner has not challenged the said Government Order.*

63. *The notice issued under Section 7 of the Land Encroachments Act, 1905 reveals that the subject land has been classified as -Government Poramboke-. Presuming that the lands are not reclassified as -Government Poramboke-, the -Grama Natham- lands are meant for housing to homeless poor people in a village. The occupants of -Grama Natham- lands in villages are assigned for their benefit only with an idea*



to provide shelter to homeless poor people. The Government is duty bound to regulate -Grama Natham- lands for the benefit of all homeless poor people without causing any discrimination.

64. Occupation of -Grama Natham- lands to a larger extent and usage of such -Grama Natham- lands for commercial purposes are not only impermissible but also unconstitutional. The very purpose of classification of -Grama Natham- lands are to provide shelter to homeless poor people and therefore, any abuse of such -Grama Natham- lands are causing infringement of basic rights of the citizen, who all are homeless poor people.

65. It is not as if -Grama Natham- lands can be occupied to a larger extent by greedy men and utilise the said lands for commercial purposes for personal gains. Such occupation of -Grama Natham- lands are to be resumed by the Government and the assignments are to be granted only to the homeless poor people on establishing their eligibility.

66. In the event of permitting such greedy men to encroach upon the -Grama Natham- lands to a larger



extent, and usage of -Grama Natham- lands for commercial purposes, it would lead to lawlessness in the Society. Persons with money power, muscle power or political power alone would be in a position to occupy such vast extent of -Grama Natham- lands for exploitation and for unjust gains, which would cause infringement of the rights of homeless poor people and the same will result in an unconstitutionality with reference to the Constitutional mandate of -Social Justice-.

67.....

68.....

69.....

70. ?Social Justice? and ?Equality Clause? are hallmark principles under the Indian Constitution. Since because Grama Natham lands do not vest with the Government, it does not mean that the Government losses its power to regulate the Grama Natham lands in accordance with the Constitutional principles as the Government is mandated to protect the basic rights of the citizen under the Constitution.

71. ?We people of India? resolved the Indian Constitution and ensured ?social justice and equality? and elimination of inequality is the inherent philosophy



in the Constitution. While speaking about equality elimination of inequality is a deemed principle under the Indian Constitution. Thus, the Government creating inequality at no circumstance be tolerated by the Constitutional Courts.

72. Political parties across the country specifically in the State of Tamil Nadu are claiming themselves as champions of social justice and equality. Thus, any ruling political party is expected to honour the -Will- of the People, which is the Constitution. ? Social justice and equality? clause enunciated under the Constitution do not permit any greedy men to occupy larger extent of Grama Natham lands for commercial purposes and for personal gains. The very classification ?Grama Natham? cannot be suited to the lands falling under the territorial jurisdiction of Corporations, Municipalities and Towns. Thus, under the guise of the classification as ?Grama Natham? no person can be allowed to grab the lands for unjust gains and by depriving the homeless poor people, who all are longing to secure free house sites to lead their livelihood. Greedy men are liable to be evicted under the provisions of the Tamil Nadu Land Encroachment Act, 1905. Whether the Government notified



reclassification of Grama Natham lands in urban areas or not. It is deemed to be reclassified on account of urbanisation and the Grama Natham lands lost its character and relevance after urbanisation of towns, municipal areas or cities.

73. Classification of lands are not static. It is changing due to continuous developments and the villages are becoming Towns and the Towns are becoming Cities. So also the Panchayats are upgraded based on the developments and Municipalities are upgraded as Corporations based on the population and the developments in various localities. Therefore, classification of land is a changing phenomena, which can never be static. Even if the Government failed to reclassify the lands in a particular area, no citizen can abuse the non~classification or incorrect classification of Government lands for illegal and unjust gains. In such circumstances, reclassification is a deemed concept, which is to be applied taking note of the urbanisation in the particular locality. Even in case, where there is no reclassification of Government lands notified and such lands are high value lands falling within the urban areas, then the occupants cannot claim that they are the title holders of Grama Natham lands,



unless such persons hold title approved in the manner known to law.

74. Exploitation of -Grama Natham- lands for commercial purposes at no circumstances are permissible. -Grama Natham- lands are not meant for commercial usage. The persons in occupation of -Grama Natham- lands if allowed to convert the same for commercial purposes, then the concept of -Grama Natham- lands for the usage of construction of houses for landless poor people is defeated. Thus the Government is empowered to step in and evict the encroachers abusing the -Grama Natham- lands for commercial purposes.

75. The spirit of the Revenue Standing Order 21 (RSO 21) is to be looked into by this Court. RSO 21 (1) Note stipulates that ?in assigning lands for house sites care should be taken to see that land is not granted to persons already possessing enough land for their reasonable requirements and that preference is given to those who own no house site and whose family-s income does not exceed Rs.12,000/~ per annum?.

76. Clause (1)(ii) to RSO 21 speaks about the assignment of house site is banned in the following



cases:

(a) District Headquarters and Towns with a population of with over 2 lakhs ? 8 kilometers.

(b) Other Towns with a population exceeding one lakh and upto two lakhs ? 5 kilometers.

(c) Town with a population exceeding 50,000 and not exceeding one lakh ? 3 kilometers.

(d) Other Towns with a population of less than 50,000 ? 1.5 kilometers.

77. RSO 21 commences in general by stating that portions of -Grama Natham- lands or village site at the disposal of the Government not being the land required for the common use of the villagers may be granted for building purposes to the bonafide applicants. Therefore, the procedures for assignment of -Grama Natham- lands in villages are enumerated in RSO 21 and the Revenue Authorities are incompetent to assign the lands classified as -Grama Natham- beyond the scope of RSO 21. Sub clause (2) to RSO 21 provides procedure in dealing with the applications. The contents state that the applications for house site shall be made in the form in Appendix IV~A and shall clearly specify the land required, the purpose for which it is wanted (i.e.,) whether for constructing a Thatched or



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Tiled or Terraced building or for erecting a Cow Shed and so on?. The publication is to be made while dealing with the applications filed by the persons seeking assignment of -Grama Natham- lands in villages. A report is to be prepared and sent to the Tahsildar signed by the Village Administrative Officer counter signed by the Revenue Inspector. Thus the procedures to deal with the applications are elaborately stipulated in RSO 21.

78. Pertinently, sub Clause (3) to RSO 21 denotes Treatment of Unauthorised Occupation. (i) Village site not to be appropriated without previous permission.~Collectors will assert the prerogative of Government by making it known in all Government villages that village site cannot be appropriated without permission previously obtained. (ii) Consequence of such appropriation.~If any portion of the village site is appropriated without permission and if the occupation is considered to be objectionable, the provisions of Act III 1905 should be applied in accordance with the instructions contained in Standing Order No.26. If the occupant is found to be entitled to an allotment and the occupation is unobjectionable the site may be formally granted in accordance with the



rule, contained in paragraph 2 above and no penalty or at most a mere nominal penalty, should be imposed unless special circumstances render the imposition of penalty desirable.

79. RSO 21 (3)(ii) unambiguously stipulates that if any portion of the village site is appropriated without permission and if the occupation is considered to be objectionable, the provisions of Act III 1905 should be applied in accordance with the instructions contained in Standing Order No.26.

80. In~discriminate assignment of Government land without running through the required background checks and without consulting the stake holders involved will defeat the object sought to be achieved. The object here is to ensure that the bonafide applicants are granted ?Grama Natham? lands or Village site for construction of housing purposes, when the Government is of the view that it is not required for common public use. In such a scenario, such lands are being assigned by identifying potential bonafide applicants, who are well fitted within the parameters as stipulated under the Revenue Standing Orders (RSO) and the Government Orders.

81. Apart from ensuring that the conditions as



stipulated in the Revenue Standing Orders (RSO), complied with, it is also vital to ensure that the object envisioned is achieved.

82. But this Court is witnessing that in Multitude cases, the assignment of Government lands or majorly done to the powerful and influential members of the society, who may not be bonafide applicants and in turn these Government lands are used for commercial purposes. With the efflux of time, the de facto purpose or essence is washed away and or is made to seem right to the visible eyes.

83. This defeats the crux of such assignments of Government lands done by the Government. An independent and meticulous examination and discussion is a cardinal requirement before such assignments of Government lands or Grama Natham lands are made.

84. The Government is not empowered to grant lands based on their own whims and fancies. A guideline needs to be put in place to ensure that power in assignment of Grama Natham lands is bridled and used for the rightful purposes to the rightful people. The Government is not just for politicians and party



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men. It is the representative of the common man. It does not only include the top echelons of the society, but travels the bottom rung of the ladder and it is the inherent duty of the Government to work for their upliftment both socially and economically. This can be achieved through schemes, such as assignment of Government lands, Natham lands, which is a welfare measure.

85. Therefore, any unauthorised occupation of -Grama Natham- lands is impermissible and occupants are to be construed as encroachers and are liable to be evicted by following the procedures as contemplated under the Tamil Nadu Land Encroachments Act, 1905. Thus the contention of the petitioner that Land Encroachments Act, 1905 is not applicable in respect of -Government Poramboke ~ Grama Natham- land is untenable.”

9. The cardinal principles are carved out from the directive principles of State Policy under Article 39(b) of the Constitution of India,



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which states that ownership and control of the material resources including the Grama Natham, etc., of the community are so distributed as best to subserve the common good. In order to achieve the said principles, State themselves ensure that the lands including Grama Natham Poromboke lands are distributed to sub serve the common good. Equal distribution of land to the landless poor people is the mandate. Therefore, the larger extent of such Grama Natham Poromboke cannot be claimed by any individuals for commercial exploitation or their personal gains. Therefore, the notion that the Government has no power to interfere, in respect of Grama Natham lands are oppose to the constitutional principles and we are of the considered opinion that the State is empowered to regulate the more material resources including Grama Natham Poromboke lands, so as to ensure that it is distributed to sub serve the common good.

10. In the present case, the writ petitioner/Trust could not able to establish that the assignment of larger extent of 'Grama Natham Poramboke' lands granted in their favour by the Government. They are unable to establish that the Patta has been granted in their favour by the Government. That being so, the petitioner/Trust have no right to claim compensation for the lands



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taken over by the Chennai Metro Rail Limited for developing the Rail project.

It is unambiguous that the petitioner/Trust are encroachers of 'Natham Poromboke' lands. Therefore, they are not entitled to seek any compensation.

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

[S.M.S.J.] [K.R.S.J.]
14.02.2024

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Speaking Order : Yes/No
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Thiruvallur District,
Thiruvallur.

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2.The Tahsildar,
Thiruvottiyur Taluk,
Thiruvottiyur.

3.The District Revenue Officer/Legal Officer,
Chennai Metro Rail Limited,
CMRL Depot, Admin Building,
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S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.

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