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W.P.No.23647 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23647 of 2024

And

W.M.P.Nos.25867 and 25868 of 2024

Meston Education &
Development Association (P) Ltd.,
A Company incorporated under the
Indian Companies Act
Represented by its Secretary

... Petitioner

Vs.

1.The General Manager,
(UG – Construction), Phase II,
CMRL TU – 02, Package,
2nd Floor, Chennai Metro Rail Limited,
Anna Salai, Nandanam,
Chennai – 600 035.

2.Project Manager, (Corridor 3 – TUO2, CMRL),
LARSEN & TOUBRO LTD.

3.M/s.Bureau Veritas (India) Private Limited,
Ambattur,
Chennai.

4.Larsen & Toubro Limited Construction

5.The Chairman,
The Heritage Conservation Committee,
5th Floor, Main Conference Hall of CMDA,
Egmore,
Chennai – 600 008.

... Respondents



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Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in respect of notice dated 31.07.2024 in CMRL/CON/UG/TU02/General/F13/0045 by the first respondent along with minutes and report, quash the same and consequently direct the respondents not to carry out the soil investigation works in the school premises.

For Petitioner : Mr.P.Sam Japa Singh

For Respondents : Mr.P.S.Raman for R1
Advocate General
Assisted By
Mrs.Rita Chandrasekar
Mr.Jayesh B.Dolia for R2 and R4
for M/s.Iyer and Dolia
Mr.Akhil Akbar Ali for R5

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records in respect of notice dated 31.07.2024 in CMRL/CON/UG/TU02/General/F13/0045 by the first respondent along with minutes and report, quash the same and consequently direct the respondents not to carry out the soil investigation works in the school premises.

2.The learned counsel appearing for the petitioner submitted that the petitioner Association is carrying out its objects as set out in



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its constitution. By reasons of performance of the various objects, duties and acts in the nature of religious, educational and charitable; as set out more fully in the objects contained in its Memorandum of Association, the petitioner's Association constituted itself as a public charitable religious trust. There is no profit motive element in carrying out and fulfilling the various objects set out in the Memorandum of Association. All the income derived by the petitioner from its activities and in managing and administering the properties are utilized solely for the objects of the petitioner's Educational Institutions.

3.The learned counsel appearing for the petitioner further submitted that in pursuance of the Memorandum and Articles of Association, the petitioner established and maintaining the following Institutions:

Meston College of Education – Government Aided

Wesley Higher Secondary School – Government Aided

Emma Foulger Matriculation School and

Meston Educational Rehabilitation Centers for mentally handicapped (Rural and Urban) – School for Special Children.



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4.The learned counsel appearing for the petitioner further submitted that the present dispute is with regard to the Wesley Higher Secondary School, Royapettah. The said building is a heritage building and it is more than 100 years old. If the respondents implement the project to carry out the soil work and tunnelling work inside the school premises, the building may collapse or damage.

5.The learned counsel appearing for the petitioner further submitted that the first respondent has filed a counter affidavit stating that in case of exceeding alert level of 10mm, the occupants will be evacuated and the alternate arrangements will be arranged by the respondent at their cost. Hence, this Court may issue direction to the respondent to implement the averments in the counter if anything happen in future.

6.It is appropriate to extract hereunder the relevant portions of the counter affidavit filed by the first respondent:

“12.It is submitted that since the construction of the Metro Station and tunneling are in advanced stage, the change in alignment as requested by the petitioner is not technically feasible. However, considering the exigent



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nature of the case the alignment has been shifted away from the building to the extent possible. Earlier, the centre line of the tunnel to the building fact was 4.7 mts. Presently, the distance is increased to 8 mts.,

13.It is respectfully submitted that, based on the Building Condition Survey Report, the severity of the building's condition will be monitored using a "Crack Meter, Tilt Meter, Vibration Monitors, and Building Settlement Meter (BSM)" during the CMRL construction works. All project activities will be conducted with the utmost caution, adhering strictly to safety protocols under the supervision of the 2nd Respondent. In the event that any damages are observed during the construction, the CMRL will be responsible for the repairs and restoration.

14.It is submitted that CMRL has applied for the permission for project work through the Chennai Metropolitan Development Authority (CMDA) to approve tunneling near the petitioner's building and as per the 5th Respondent's i.e., Heritage Conservation Committee's Direction, this Respondent has engaged an expert body (IIT) Chennai, to



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assess the structural stability of the Heritage Structure.

15.It is respectfully submitted that based on the Building Condition Survey (BCS) and Geo-technical Investigation Report the buildings will be monitored periodically and all securities / protection measures will be prepared during the period of tunneling operations.

16.At the risk of repetition it is reiterated to state that since the project works and tunneling operations are in an advanced stage the change in alignment and route is technically not feasible.

17.It is respectfully submitted that all project works and tunneling operations will be conducted in accordance with the recommendations of the expert body, namely IIT Madras. The report submitted by IIT Madras confirms that the instrumentation has been properly planned, with specific suggestions provided to monitor the heritage structures located around the alignment. The CMRL will strictly adhere to all recommendations from the expert body, and



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the project will be implemented using state-of-the-art technology, following the principles outlined by the experts, with the utmost care and protection for the heritage structures.

18.Further, we respectfully submit that, as suggested by IIT, protection will be planned for the duration between one month prior to the TBM reaching the building location and one month after the TBM passes through the building or until the time the settlement ceases, whichever is later.

19.It is respectfully submit that, in case of settlement exceeding alert level of 10mm, the occupants will be evacuated and the alternate arrangements will be arranged by the respondent at their cost. However, this is not expected to be happen. Since the alignment is shifted away from the building.

20.It is respectfully submitted that any interruption in the soil investigation work and tunneling operations, if caused at the petitioner's request, would result in substantial financial exchequer for this Respondent. Given that the project is both public and time-sensitive, halting the



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Tunneling operations would jeopardize the financial integrity of the entire Phase-II Project. Additionally, any delay in the continuation of the project would not only strain financial resources but also significantly extend the project's timeline, causing undue delay in its completion. Such delays could have far-reaching implications, including increased costs, disruption to planned schedules, and a failure to meet critical deadlines, which could ultimately affect the public interest that the project is intended to serve."

7.In view of the fair submission made by the learned counsel appearing for the petitioner and in view of the counter affidavit filed by the first respondent, particularly the undertaking given in paragraph nos.19 and 20 of the counter affidavit, no further order needs to be passed in this writ petition.

8.The writ petition is disposed of with direction to the respondents to strictly adhere to the averments made in the counter affidavit filed by the first respondent. No costs. Consequently, the connected miscellaneous petitions are closed.



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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

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