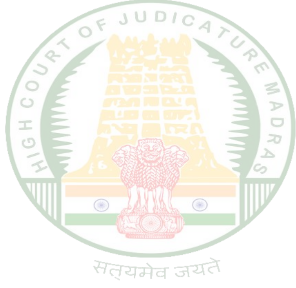

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In the High Court of Judicature at Madras

Reserved on 03.3.2025	**Delivered on : 11.3.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.33116 of 2024 &
WMP.No.35874 of 2024

United India Insurance
Company Ltd., Chennai-14 ...Petitioner

Vs

1.The State of Tamil Nadu, rep.
by the Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.

2.The Special Revenue Officer,
Chennai Metro Rail Limited,
Chennai Metro Rail Limited (CMRL),
METROS 327, Anna Salai,
Nandanam, Chennai-35.

3.The Chennai Metro Rail Limited,
rep.by its Managing Director,
METROS 327, Anna Salai,
Nandanam, Chennai-35.

4.The Chennai Metropolitan
Development Authority,
rep.by its Member Secretary,

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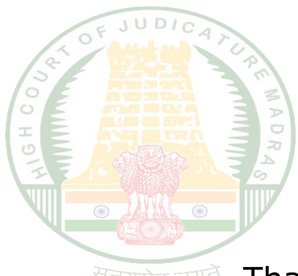

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Thaalamuthu Natarajan
Maaligai, Gandhi Irwin Road,
Egmore, Chennai-8.

5.M/s.Aalayam Kaapom Foundation,
rep.by its President
Mr.P.R.Ramanan ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the notice dated 26.9.2024 issued by the second respondent to the petitioner and quash the same.

For Petitioner	:	Mr.Vijay Narayan, SC for Mr.Keerthikiran Murali
For Respondents	:	Mr.P.S.Raman, AG assisted by both Mr.A.Selvendran, SGP for R1 & R2 & Mr.B.Vijay, Standing Counsel for R3 Mrs.P.Veena Suresh, Standing Counsel for R4 Mr.Ramamoorthy for R5

ORDER

This a petition filed under Article 226 of The Constitution of India

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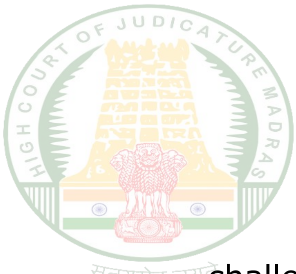
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challenging a notice dated 26.9.2024 issued by the second respondent - the Chennai Metro Rail Limited (CMRL) under Sub-Section (2) of Section 3 of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (for short, the Act), calling upon the petitioner to show cause within 30 days as to why the property situated at T.S.No.329/2 measuring an extent of 837 sq.meters should not be acquired.

2. The challenge arises in the backdrop of the following facts:

(i) M/s.United India Insurance Company Limited - the petitioner has constructed a new head office, which has the unique feature of having double curvature profile both vertically and horizontally and it is the first of its kind in terms of a structural steel diagrid construction. The building consists of 14 floors with sufficient parking space and the total built up area is approximately 25,000 sq.meters.

(ii) The petitioner has obtained three-star green building certification. Such construction was put up after getting necessary approval from the fourth respondent namely the Chennai Metropolitan Development Authority (CMDA) and since this construction was put up within 50-meter radius of the route map of Phase II of the project of the CMRL, a no objection certificate (NOC) was also obtained from the

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CMRL before the CMDA granted approval.

(iii) Initially, a decision was taken to have an entry/exit point of the Metro Station within the premises of Arul Mighu Sri Rathina Vinayagar and Durgai Amman Temple, Whites Road, Chennai-14 (hereinafter referred to as the temple). At that stage, a public interest litigation (PIL) was instituted before this Court in W.P.No.18163 of 2024, pursuant to which, the entry and exit point of the Metro Station was proposed to be shifted to the other side of the road at the entrance tower inside the United India Insurance Company Building.

(iv) It appears that the said PIL before the First Bench was disposed on the basis of an undertaking given by the learned Standing Counsel appearing for the CMRL that the entry/exit point of the Metro Station would be shifted to the site of the petitioner. On the basis of the said undertaking, the said PIL was disposed on 08.8.2024 and the impugned notice has, thereafter, been issued by the CMRL on 26.9.2024. It is, however, an admitted fact that the petitioner was not even made a party nor was heard before orders were passed in WP.No.18163 of 2024.

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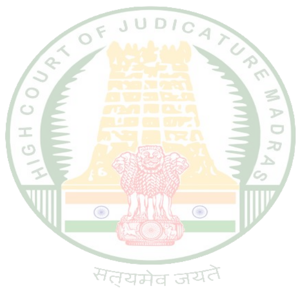
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3. Respondents 2 and 3 have filed a counter affidavit wherein they took a stand that the reasons given by the fifth respondent were considered, that a decision was taken to change the alignment plan, that the proposal was submitted before the First Bench of this Court, that it was recorded and that thereafter, the said PIL was disposed of by order dated 08.8.2024. According to them, pursuant to that, a revised land plan schedule was prepared by the Technical Wing of the CMRL and thereafter, the public notice was published in the local dailies on 27.9.2024 in Form B under Section 3(2) of the Act proposing to acquire an extent of 837 sq.meters of land from the petitioner for the formation of a Metro Station. It was further stated in the said notice that it was proposed to hold a public hearing on 29.10.2024 and that the objectors were at liberty to appear in person or through the authorized representative or through their counsel and present oral and documentary evidence in support of their objections.

4. Respondents 2 and 3 have also taken a stand in the counter that the petitioner had ample opportunity to file their objections to the proposed acquisition, that the same ought to have been considered independently before a final decision is taken and that however,

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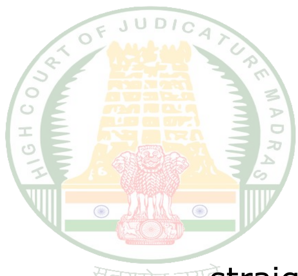
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straightaway, this writ petition has been filed challenging the said notice. In so far as the extent of 837 sq.meters proposed to be acquired from the petitioner is concerned, it has been stated that the same is lying vacant and that there were no superstructures thereon. They have also taken a stand to the effect that the no objection issued by the CMRL pertained only to Phase I and at that point of time, there was no proposal for Phase II.

5. Respondents 2 and 3 have further stated in the counter that in order to address the concerns of the petitioner, a meeting was convened wherein it was informed to the petitioner that all the underground utilities of the United India Insurance Company Limited, which were going to be disturbed during the period of execution of the project, would be reinstated after the completion of the project and that the project, which is of public importance, is sought to be stalled by the petitioner. Accordingly, they have sought for dismissal of this writ petition.

6. Heard the learned Senior Counsel appearing on behalf of the petitioner, the learned Advocate General appearing on behalf of

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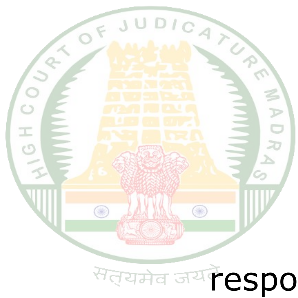
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respondents 1 to 3, the learned Standing Counsel appearing for the CMDA and the learned counsel appearing for the fifth respondent.

7. The learned Senior Counsel appearing on behalf of the petitioner submitted as follows :

(a) The show cause notice dated 26.9.2024 received by the petitioner is of no consequence since the CMRL had already taken a decision to acquire the subject land by giving an undertaking before the First Bench of this Court in the earlier PIL. According to him, the issuance of the show cause notice and the so-called opportunity are only empty formalities and they virtually amount to post decisional hearing. The CMRL had taken a specific stand that their original alignment was only through the property belonging to the temple and that the change of alignment had taken place only due to the intervening PIL that was filed by the fifth respondent.

(b) In the earlier PIL, the petitioner was not a party and any undertaking given therein and the order passed in the earlier PIL will not bind the petitioner. The petitioner has spent over Rs.250 Crores for the construction of the premises, which is an iconic building and it was done only after obtaining the NOC from the CMRL since the proposed

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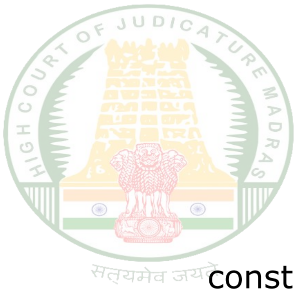
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construction was within 50 meters of the project. Once the NOC was granted by the CMRL, there was a legitimate expectation on the part of the petitioner that there will be no disturbance for the petitioner in terms of acquisition for the future projects whereas the CMRL has gone back and taken a different stand only due to the intervening PIL that was filed by the fifth respondent. The acquisition proceedings proposed by the CMRL will virtually take away the frontage of the iconic building and it will cause serious prejudice to the petitioner.

8. Per contra, the learned Advocate General appearing on behalf of respondents 1 to 3 made the following submissions :

(a) The CMRL had originally proposed to acquire the land belonging to the temple wherein it was found that the temple was an old temple. The worshipers made a fervent plea not to disturb the temple and to utilize the land available in the opposite side. Considering the same, after making a joint inspection, it was decided to acquire the land from the petitioner and accordingly, a revised land plan schedule was prepared by the Technical Wing of the CMRL. The CMRL has not taken any final decision nor is acting with any preconceived mind and it is always open to the petitioner to give their

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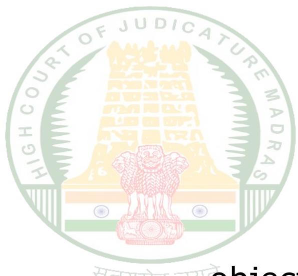
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objections, which will be considered independently.

(b) The project was getting delayed at the crucial stage and therefore, even meetings were arranged with the officials of the petitioner wherein it was informed that out of 837 sq.meters, an extent of 404 sq.meters alone is going to be acquired permanently and an extent of 315 sq.meters is going to be considered as permanent MoU area, which will be under the control of the petitioner, but the petitioner cannot put up any permanent structure over this area. The balance extent of 234 sq.meters is only going to be utilized as a temporary work area. Thus, out of the extent of 837 sq.meters, an extent of 549 sq.meters will revert back to the petitioner, out of which, the petitioner cannot put up any permanent structure in 315 sq.meters.

(c) That apart, the Thousand Lights Metro Station, which is proposed to be constructed, will be built up by matching the standard of the building that has already been put up by the petitioner so as to ensure that the station does not, in any way, diminish the marvel of the building constructed by the petitioner. The CMRL was desperate to build the construction of the station as early as possible and therefore, considering the sentiments expressed by the devotees, they decided to

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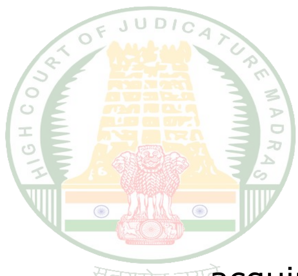
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acquire the land belonging to the petitioner by getting an alternative revised plan.

(d) From July 2024, the entire project has come to a standstill and hence, a decision has to be taken at the earliest point of time to proceed further with the project and to complete the construction of the metro station, which is the meeting point between Phase-I and Phase-II of the project. The construction has to be made either on the side of the temple or by utilizing the property of the petitioner and the station cannot be built up in any other place.

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned notice.

10. It is not in dispute that the original alignment plan in connection with the Metro Rail Project of the CMRL was in respect of 5 Tier Temple Rajagopuram of the temple at Whites Road, Royapettah, Chennai until the temple and the peepal tree in block No.11, T.S.Nos. 328/1, 328/14, 327/1, 327/5, 325/1, 325/3 and 325/7 of Triplicane Village, Mylapore Taluk belonging to the temple. It was proposed to be

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relocated/demolished for the purpose of Phase-II Corridor III, Thousand Lights Metro Station.

11. On coming to know of the same, earlier, a PIL in WP.No. 18163 of 2024 came to be filed not by the Idol/Temple, but by an organization, which goes by the name of "Aalayam Kaapom Foundation" - the fifth respondent. During the pendency of the said PIL, a joint inspection seemed to have been conducted and the CMRL submitted an alternative proposal before the First Bench of this Court. For proper appreciation, the relevant portion in paragraph 2 of the order dated 08.8.2024 in W.P.No.18163 of 2024 is extracted as hereunder :

> *"The Entry/Exist point of the Metro Station, initially proposed to be built within the Rathina Vinayagar Temple premises, will now be shifted to the other side of the Nuzhaivayil Gopuram, inside the United India Insurance area."*

12. The First Bench of this Court took note of the alternative proposal submitted by the CMRL to utilize the lands belonging to the petitioner and the said PIL was disposed of recording the said

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proposal. After the disposal of the said PIL, the impugned notice under Section 3(2) of the Act came to be issued to the petitioner on 26.9.2024 by the CMRL.

13. It is not in dispute that the change in alignment was only due to the earlier PIL that was filed by the fifth respondent and the alternative proposal submitted by the CMRL. Till then, the proposed acquisition and the building up of the Thousand Lights Station were planned only in the property belonging to the temple. There was no objection from the Hindu Religious and Charitable Endowment (HR & CE) Department on behalf of the idol and the objections seem to have been raised by certain persons claiming to be the devotees of the temple.

14. Based on the materials placed before this Court, it is seen that the Rathna Vinayagar deity is virtually placed in the walking platform, which is supposed to be used by the general public. In so far this deity is concerned, it has been decided to relocate the same in some other place that is identified by the HR & CE Department. Therefore, even as per the original plan, the Rathna Vinayagar deity

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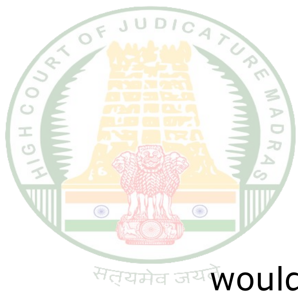
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would have been relocated to an alternative place.

15. Hence, what remains is the Durgai Amman temple, which has a Gopuram and if the original plan had been implemented, the Gopuram would have been removed and the deity would have been brought within the D-wall and after completion of the work, the Gopuram would have been restored. It is not as if the entire temple would have vanished and the only grievance may be that there will be no sufficient space for the devotees and that the entry/exit point of the Thousand Lights Station will be adjacent to the Gopuram entrance.

16. In order to accommodate the Durgai Amman temple, an alternate plan was suggested whereby the temple will be untouched and the Gopuram will be shifted five meters inside the temple premises and will be reinstated after completion of the CMRL project. During the shifting process, an alternative access will be provided for the devotees to access the Durgai Amman temple.

17. An impression was tried to be created as if the Durgai Amman temple is a very old temple and hence, it should not be

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disturbed.

18. However, the materials placed before this Court would show that the Rathna Vinayagar and Durgai Amman temple was opened in the year 1960 and it is not an 100 year old temple as was claimed by the fifth respondent.

19. In the earlier PIL that was filed by the fifth respondent, the CMRL was willing to consider the request made by the fifth respondent and as an alternative, was also willing to acquire the property belonging to the petitioner, for which purpose, the petitioner ought to have been made as a party to the proceedings. In the absence of the same, the undertaking given before the First Bench of this Court will not bind the petitioner and the order passed therein recording the alternative proposal will also not bind the petitioner. It is too well settled that a judicial order passed behind the back of an affected party is void vis-à-vis the said party. Useful reference can be made to the decision of the Hon’ble Apex Court in the case of ***A.R Antulay Vs. R.S Nayak [reported in 1988 (2) SCC 602]***.

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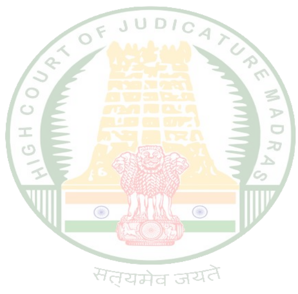
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20. The CMRL, after having given an undertaking before the First Bench of this Court, issued the impugned notice under Section 3(2) of the Act calling upon the petitioner to show cause as to why the subject property should not be acquired. As contended by the petitioner, this notice is only a fiat accompli and is sans any meaning since the CMRL has already taken a decision and reported before the First Bench of this Court and the notice itself is nothing, but a formality and it amounts to post decisional hearing, which, by itself, vitiates the impugned notice. The object of a notice under Section 3(2) of the Act is to enable the owner of the property to show cause and persuade the CMRL to drop the proceedings or find alternative proposals. Having gone before the First Bench of this Court and undertaken to proceed against the property behind the back of the petitioner, the notice issued under Section 3(2) of the Act at this stage is obviously a farce. It is rather shocking that all of this was done behind the back of the petitioner - a public sector entity under the aegis of the Ministry of Finance, which has spent crores of rupees of public funds to put up its Head Office.

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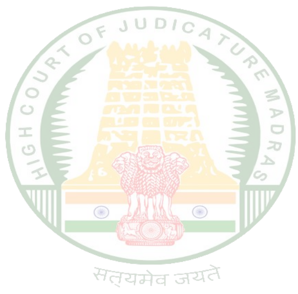
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21. The petitioner has put up a construction, which is stated to be an architectural marvel and an iconic building by spending over Rs.250 crores. While putting up this building, the NOC was obtained from the very same CMRL since the building was proposed to be constructed within 50 meters of the project undertaken by the CMRL. This NOC issued by the CMRL is a condition precedent for granting approval by the CMDA for constructing the building. Hence, all the Authorities have made the petitioner believe that the project will not cause any disturbance to the proposed construction and as a result, the petitioner has spent huge sums of money running into crores to put up the building. The question then is whether these authorities can now be heard to contend that the lands of the petitioner should be acquired after having (a) induced the petitioner to seek prior approval (b) granted no objection and (c) consequently allowed the petitioner to invest funds and put up construction. In other words, whether the revised decision to proceed against the property of the petitioner is precluded by the principle of promissory estoppel and smacks of unfairness amounting to an abuse of power.

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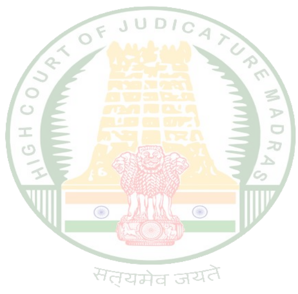
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22. It is now well settled that all power, executive or legislative, must be used transparently and in a non-arbitrary manner. The central tenet of Article 14 of The Constitution of India is non-arbitrariness in decision making, the principle being traceable to the rule of law. In the decision of the Hon'ble Apex Court in the case of ***Noida Entrepreneurs Association Vs. Noida, [reported in 2011 (6) SCC 508]***, the Supreme Court observed as follows:

> *"Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. 'Public authorities cannot play fast and loose with the powers vested in them.' A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other."*

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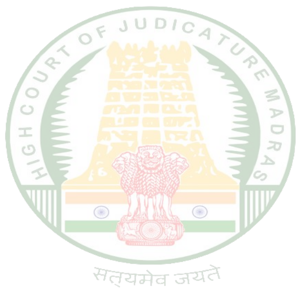
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23. The principle of promissory estoppel has, over the years, emerged as a useful tool in the armory of judicial review to control state action. Its emergence was announced way back in the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Anglo Afghan Agencies [reported in AIR 1968 SC 718]*** wherein Shah,J (as the learned Chief Justice then was) set out the principle as follows:

> *"This case is, in our judgment a clear authority that even though the case does not fall within the terms of Section 115 of the Evidence Act, it is still open to a party who has acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise is not recorded in the form of a formal contract as required by the Constitution."*

24. In the decision of the Hon'ble Apex Court in the case of ***Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P. [reported in 1979 (2) SCC 409],*** the principle has been explained as under:

> *"It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting*

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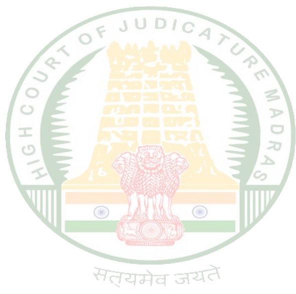
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in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment. Here, the appellant clearly altered its position by borrowing moneys from various financial institutions, purchasing plant and machinery from De Smet (India) Pvt. Ltd., Bombay and setting up a vanaspati plant, in the belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the date of commencement of the production. The Government was, therefore, bound on the principle of promissory estoppel to make good the representation made by it."

25. Applying the aforesaid tests, it is undeniable that the petitioner sought a no-objection for construction from the CMRL, which was considered and granted. Thereafter, the CMDA has also considered and approved the building plan. Acting on the no-objection of the CMRL and the approval of the CMDA, the petitioner has pumped in excess of 200 crores of public money and put up a superstructure. In the opinion of this Court, all the elements of promissory estoppel stand satisfied.

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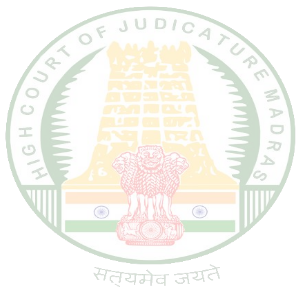
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26. The CMRL, on its part, has put out a representation: a representation that the lands are not required for the metro project. The CMDA, by granting approval, has induced the petitioner to invest funds. To allow the CMDA and the CMRL to sing a different tune at this juncture and that too on the basis of a proceeding, to which the petitioner was not even a party, would be grossly unfair and arbitrary. It would clearly tantamount to an abuse of power violating Article 14. As pointed out supra, the consent given by the CMRL before the First Bench of this Court cannot bind the petitioner since it was not made a party nor was heard before such orders were passed.

27. It is now necessary to see as to whether the principle of promissory estoppel can be defeated by any of the usual defences of the State. The first in line is the argument that promissory estoppel cannot found a cause of action. In other words, estoppel is only a shield and not a sword. This contention need not detain us for long as the Hon'ble Supreme Court has repelled this contention a long time ago in the decision in the case of ***Motilal Padampat Sagar Mills Co. Ltd.*** wherein it was further held as under:

"12. ... having regard to the general

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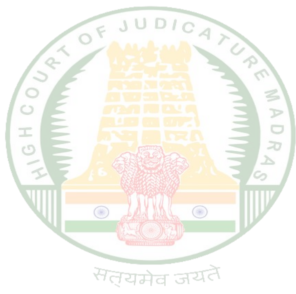
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opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to protect this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a juristic device for preventing injustice. … We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so."

28. The next defence is that estoppel cannot be put against the State in exercise of its sovereign functions more particularly its power of eminent domain while acquiring lands for public purposes. This defence is equally fallacious and stands repelled in the decision of the Hon'ble Supreme Court in the case of ***Motilal Padampat Sagar Mills Co. Ltd.*** in the following passage:

"It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine

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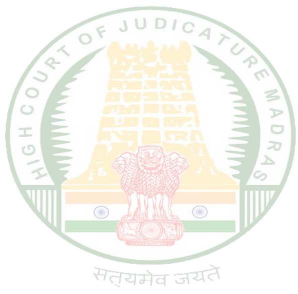
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of promissory estoppel is concerned."

29. In the decision of the Hon'ble Supreme Court in the case of ***Manuelsons Hotels (P) Ltd. Vs. State of Kerala [reported in 2016 (6) SCC 766],*** it was held by the Court speaking through R.F Nariman,J that it was not necessary for the petitioner to show that it had suffered any detriment and it was enough that the petitioner had relied upon the promise or representation held out and altered its position relying upon such assurance.

30. In the instant case, there can be no dispute that the petitioner had relied on the NOC of the CMRL and the planning approval issued by the CMDA and thereafter expended funds for construction thereby satisfying the requirements of reliance upon the representations/acts of the authorities.

31. Lastly, it is too late in the day for the State to say that the principle of promissory estoppel is the sole preserve of private law and has no application to public law disputes. Such arguments cannot hold water in the light of the decision of the Hon'ble Supreme Court in the

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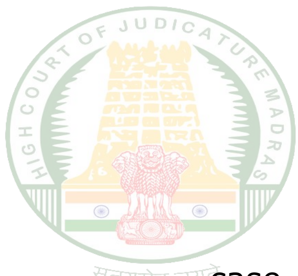
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case of ***State of Punjab Vs. Nestle India Ltd. [reported in 2004 (6) SCC 465]***, wherein it was held as under:

> *"It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel."*

32. As a matter of fact, the width and scope of the principle of promissory estoppel has been explained by Nariman,J in the decision of the Hon'ble Supreme Court in the case of ***Manuelsons Hotels (P) Ltd.*** as hereunder:

> *"That the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two,*

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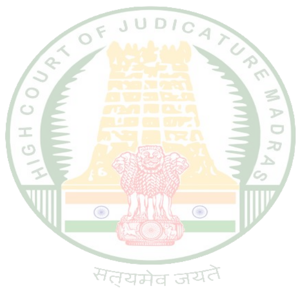
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> *that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party."*

33. By granting the NOC and the approval, the CMRL and the CMDA led the petitioner to believe that its lands would not be necessary for the CMRL work thereby inducing the petitioner to put up a Rs.200 crore construction. In the opinion of this Court, to allow the CMDA and the CMRL to casually resile from its earlier position would be so grossly unfair and arbitrary so as to violate Article 14 in all its hues. The fact that all this was achieved on the basis of a writ petition, to which, the petitioner was not even made a party, makes the position even worse.

34. It was then faintly suggested that a spot inspection was carried on by the learned Judges of the First Bench of this Court and a decision was, thereafter, taken to shift the original site of the station to

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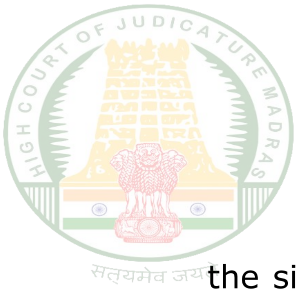
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the site of the petitioner. The inspection that had taken place, without notice to the petitioner right under its nose, sets up an impregnable defence of patent violation of the principles of natural justice. This Court is not inclined to comment on the correctness or legality of the aforesaid procedure except to re-state what the Privy Council had said over a century ago when two learned Judges of the Bombay High Court embarked on a similar exercise in the decision in the case of ***Kessowji Issur Vs. Great Indian Peninsula Railway Company [reported in 1907 (17) MLJ 347],*** which is as hereunder :

> *"The appeal having been heard on its merits, there ensued what, it may be hoped, is an unprecedented chapter in appellate procedure. The Court seems to have adopted the view that the train had overshot the platform, and to have considered that the crux of the case was the question of light, and this question, of course, was a complex one, what light came from the sky and what from artificial sources—the station lamps having been the artificial light relied on by the respondents. The course taken by the Appellate Court had better be described in their own language:—*
>
> *'Owing to this difficulty and to the vital importance of settling it with certainty, it was*

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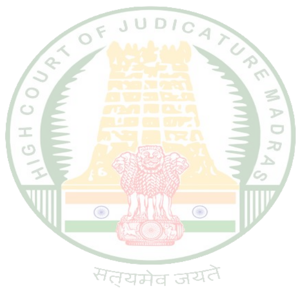
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suggested that we should visit the scene of the accident under conditions approximating as closely as possible to these which prevailed when the plaintiff met with his injuries. This suggestion was welcomed by counsel on the both sides, and after communication with the local observatory it was agreed that on the evening of the 8th December at 40 minutes after sunset the conditions now in question would be, as nearly as possible, exactly reproduced. At the time, therefore, attended by the legal advisers of both parties, we visited Sion Station, with the result that we are clearly of opinion that the plaintiff's accident must be attributed to his own carelessness and that the company cannot be held liable for negligcnce. By the courtesy of the Railway Company we were provided at Sion with the same carriage in which the plaintiff was travelling on the 30th March, and we were thus enabled to make a thorough investigation of the material conditions accompanying the accident.'

The practical result was that the appeal was allowed and the suit dismissed, the case being decided, not on the testimony given at the trial as to what took place on the night of the accident, <u>but by the Judges' observation of what they saw on another night altogether. Their Lordships find it impossible to admit the legitimacy of such</u>

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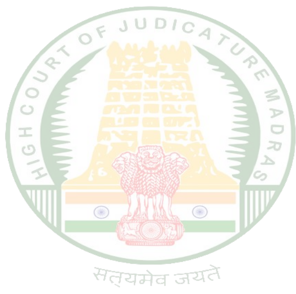
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procedure or the soundness of such conclusions. Even if the question of light could be isolated from the rest of the case, there was no ground whatever for despairing of sound results being yielded by a careful analysis of the evidence, and, in fact, this was demonstrated by the excellent judgment of the trial Judge. On the other hand, the method actually adopted is subject to the most palpable objections and fallacies.

The Privy Council went on to conclude as under:

'Their Lordships do not approve of such a suggestion; but even if it had been tentatively carried out, it did not necessarily follow that the Court would cast to the winds the legal evidence in the case, and decide on impressions arising on the concerted representation. It would be too strict to hold that it is the duty of counsel, at their peril, to restrain Judges within the cunus curice, and to insist on their abstaining from experiments which to some may prove too alluring to admit of adherence to legal media concludendi'."

35. If the alternative plan was proposed by the CMRL based on the advice of the Technical Experts without any intervention of the fifth respondent by means of a PIL, the entire consideration would have

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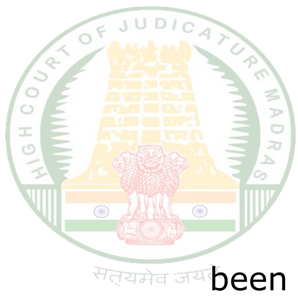
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been different and in such an event, this Court would have directed the petitioner to submit their objections and there was no question of interfering with the notice issued under Section 3(2) of the Act. The earlier site was chosen and finalized by a team of technical experts, who obviously had safety and convenience as paramount factors. The undisputed factual position is that the notice has emanated due to the intervention of the fifth respondent, through the PIL, which resulted in the CMRL somersaulting and altering the proposal to shift the site.

36. Thus, the considerations for shifting the site were not solely motivated by considerations of safety, convenience and other purely technical factors, which were undoubtedly examined in the earlier plan. It is evident that it was largely, if not solely, on account of the PIL, in the absence of which, the CMRL would have obviously gone ahead and implemented the original proposal. Thus, the very basis of the notice under Section 3(2) of the Act appears to be founded on the premise that by shifting the site, the sentiments of the devotees, of which the 5th respondent allegedly claims to represent, need not be disturbed.

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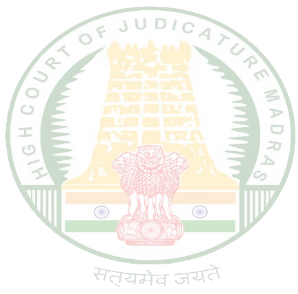
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37. This leads us to the next question. Are lands belonging to religious institutions exempt from land acquisition or is there any special consideration, which must be bestowed by the Authorities while acquiring those lands? The issue came up before the Honble Supreme Court in the case of ***Khajamian Wakf Estates Vs. State of Madras [reported in 1970 (3) SCC 894]*** wherein a contention that an acquisition of lands owned by religious institutions would violate Article 26 was repelled by the Constitution Bench in the following words:

> **"***It was next urged that by acquiring the properties belonging to religious denominations, the Legislature violated Article 26(c) and (d) which provide that religious denominations shall have the right to own and acquire movable and immovable property and administer such property in accordance with law. These provisions do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own, acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own that property. Thereafter their right to administer that property ceases because it is no*

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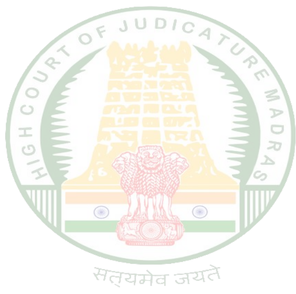
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longer their property. Article 26 does not interfere with the right of the State to acquire property."

38. In the decision of the Hon'ble Apex Court in the case of ***Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj Vs. State of Gujarat [reported in 1975 (1) SCC 11],*** a similar contention was raised and rejected as under:

> **"***One thing is, however, clear that Article 26 guarantees inter-alia the right to own and acquire movable and immovable property for managing religious affairs. This right, however, cannot take away the right of the State to compulsorily acquire property in accordance with the provisions of Article 31(2). If, on the other hand, acquisition of property of a religious denomination by the State can be proved to be such as to destroy or completely negative its right to own and acquire movable and immovable property for even the survival of a religious institution the question may have to be examined in a different light. That kind of a factual position, however, is not taken in these appeals before us.* ***When, however, property is acquired by the State in accordance with law and with the provisions of Article 31(2) and the acquisition cannot be assailed on any***

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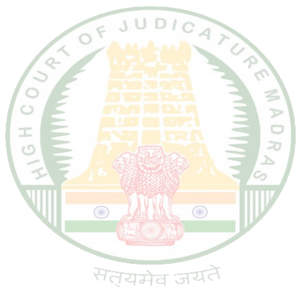
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> ***valid ground open to the person concerned, be it a religious institution, the right to own that property vanishes as that right is transferred to the State.*** *Thereafter there is no question of any right to own the particular property subject to public order, morality and health and Article 26 will in the circumstances be of no relevance. This being the legal position, there is no conflict between Article 26 and Article 31."*

39. The same issue was considered by a Division Bench of the Allahabad High Court in the case of ***Mohammad Ali Khan Vs. Special Land Acquisition Officer [reported in AIR 1978 All. 280],*** wherein it was held thus:

> *"What can be acquired and what is being acquired in the present scheme is only the immovable property, which is land within the meaning of the Land Acquisition Act. This is the property which is contemplated by Cl. (c) of Article 26 of the Constitution. Institutions contemplated by Cl. (a) can neither be acquired nor are being acquired in the present scheme. There may be a law which may make the functioning of the institution impossible. But the law of land acquisition is not such a law. A University is an*

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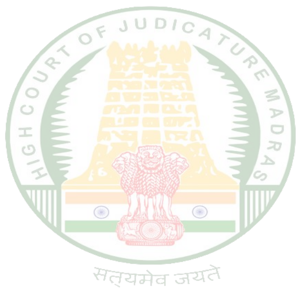
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> *institution. It may have buildings. The acquisition of the building will not mean that the University cannot function. Similarly, the building of a school may be acquired and the institution may still function. The law of acquisition of land does not either directly or indirectly affect the rights about the maintenance of institutions for religious and charitable purposes. It only takes away a certain property for public purpose, but does not either deprive the institution of its existence or make impossible its functioning.* *There is thus no conflict between Article 31(2) and Cl. (a) of Article 26 of the Constitution. The Land Acquisition Act or the provisions in the U.P. Nagar Mahapalika Adhiniyam cannot, therefore, be held to be unconstitutional."*

This decision was followed by a Division Bench of the Allahabad High Court in the case of ***Church of North India Trust Association Vs. Union of India [reported in AIR 2017 All. 143]***.

40. In the decision in the case of ***Akhara Shri Braham Buta Vs. State of Punjab [reported in AIR 1989 P&H 198]***, **Punnchi,J** (as the learned Chief Justice then was), speaking for a Division Bench of the Punjab and Haryana High Court, repelled a similar challenge

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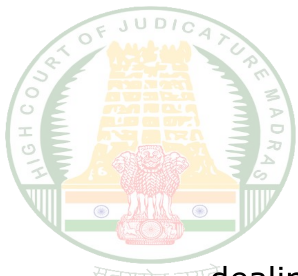
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dealing with lands being acquired near the Golden Temple. It was held as hereunder:

> *"These rights for the religious denominations were also earlier spelled out in Khajamian Wakf Estates etc. v. The State of Madras etc. [(1970) 3 SCC 894 : A.I.R. 1971 S.C. 161.] . Article 26, however, does not guarantee the freedom to establish and maintain a religious and charitable institution at a particular place or to make it immune from acquisition under the provisions of the Land Acquisition Act. The free practice of religion presupposes the practising of it anywhere and not at any particular place. The acquisition of land of such institution does not by itself destroy or completely negative the right of any denomination to establish or maintain any institution for religious purposes. On the receipt of compensation payable on account of the acquisition, the religious denomination can always acquire any other property for the same purpose for which the acquired land was being utilized. In this sense neither is the institution killed nor destroyed, merely by acquisition of its properties. It can achieve the same purpose by moving elsewhere like a natural person. Thus, for the aforesaid reasoning, we are of the considered view that by the acquisition of the afore-specified properties neither is the institution destroyed or annihil-*

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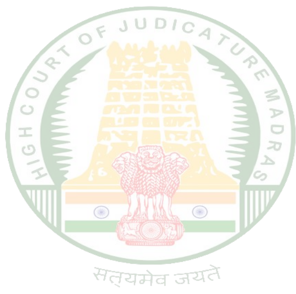

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> *ated nor is the action of the respondents violative of Articles 14, 19, 25 and 26 of the Constitution. We hold it accordingly."*

41. Thus, the law is well settled that the acquisition of lands belonging to religious institutions, in exercise of the State's power of eminent domain, is a permissible exercise, which does not violate any of their fundamental rights under Article 25 or 26 of The Constitution. A more recent decision of a learned Single Judge of the Kerala High Court in the case of ***Balakrishna Pillai Vs. Union of India [reported in 2021 (3) KLJ 674]*** requires to be noticed. A similar plea that the lands of a temple should not be acquired for road widening purposes was negatived by ***P.V.Kunhikrishnan,J*** as hereunder:

> *"According to me, one of the need of the Country is National Highway with sufficient width, with straight roads, so that citizens, businessmen, industrialists and people from all walks of life can use the same. In such a situation, if this Court starts to interfere in acquisition proceedings of National Highway on the basis that there is a curve or there is a Mosque or there is a Temple or there is a School, the acquisition proceedings could not*

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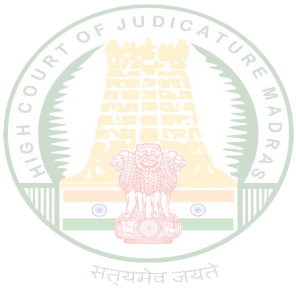
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be completed. Unless there are mala fides or unless there is patent illegality, the acquisition proceedings cannot be interfered with by the writ court, invoking the powers under Article 226 of the Constitution of India. The vehement argument of the petitioners is that, if the proposed alignment is accepted, that will destroy two mosques and two temples. Here I remember the famous film song of the veteran poet and the pride of Keralite Sri. Sreekumaran Thambi. A portion of the song is extracted hereunder:

"മണ്ണിലും വിണ്ണിലും തൂണിലും തുരുമ്പിലും

ദൈവമിരിക്കുന്നു അവൻ

കരുണാമയനായ് കാവൽ വിളക്കായ്

കരളിലിരിക്കുന്നു "

I am not a person to translate these lines. But for this judgment, English translation is almost like this. "The God almighty is omnipresent. He exist on the earth, in the sky, in pillars, and in the rust. He is the embodiment of kindness and dwells in the hearts of all, as a light of kindness." For the development of the National Highway, if the religious institutions are affected, God will forgive us. God will protect the petitioners, the authorities, and also the author of this judgment. God will be with us."

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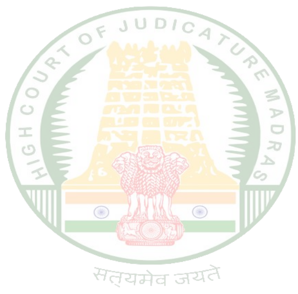
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42. This Court, like P.V.Kunhikrishnan,J, fervently believes that the Almighty would undoubtedly shower his kindness and benevolence for the development of a metro rail station, which will benefit lakhs of people from all segments of society, some of whom may well be devotees, who visit the temple. In the words of the Kerala High Court, "*God will forgive us. God will protect the petitioners, the authorities, and also the author of this judgment. God will be with us.*"

43. For all the above reasons, this Court has no hesitation in concluding that the impugned notice is vitiated as it offends Article 14 of The Constitution of India by violating the principle of promissory estoppel. The illegality is compounded by the fact that the notice is a fiat accompli to effectuate a statement made before the First Bench of this Court in the PIL filed by the fifth respondent, to which, the petitioner was not a party. In effect, the 5th respondent, the CMRL and the State Authorities appear to have staged their Hamlet, without the Prince of Denmark! Section 3(2) of the Act does not contemplate a post decisional hearing or a hearing, which is only a farce. Premeditation is usually hard to prove, but the facts here are such that the statement made before the First Bench of this Court would show

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that Section 3(2) of the Act has been turned on its head. Thus, there is a gross failure of natural justice at all levels.

44. To top it all, the fact that the CMRL has chosen to change the location solely on account of the proceedings in the PIL would show that it was not moved by paramount considerations of public safety, convenience and other technical factors, but by what was said and done in a joint inspection conducted by the First Bench of this Court.

45. And lastly, this Court is convinced that it would be completely contrary to public interest to tear down a building/or portions thereof of a recently constructed structure put up at a cost of Rs.200 crores by a public sector entity, after obtaining all clearances and the NOC from the CMRL and that too on the basis of a proceeding held completely behind its back. To permit such an exercise by the CMRL would be an egregious fraud on the power of acquisition and would be so grossly unfair and arbitrary that it deserves the label “abuse of power” under Article 14 of The Constitution of India.

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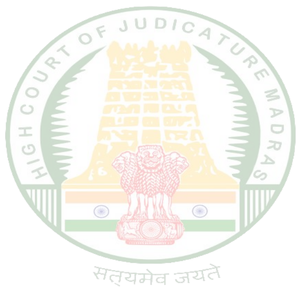
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46. In the result,

- The writ petition is allowed. The impugned notice dated 26.9.2024 issued by the second respondent - CMRL under Section 3(2) of the Tamil Nadu (Acquisition of Lands for Industrial Purposes) Act, 1997 is quashed.
- It will be open to the CMRL to proceed with its original intended plan forthwith by having the Metro Station within the premises of Arul Mighu Sri Rathina Vinayagar and Durgai Amman Temple, Whites Road, Chennai-14.
- Though this is an eminently fit case to impose exemplary costs, this Court desists from doing so in the hope that the State and the 5th respondent realize the true meaning of the words of Swami Vivekananda that *"the highest aim of religion is to unite mankind and serve humanity."*
- Costs made easy. Consequently, the connected WMP is closed.

11.3.2025

Index : Yes
Neutral Citation : Yes

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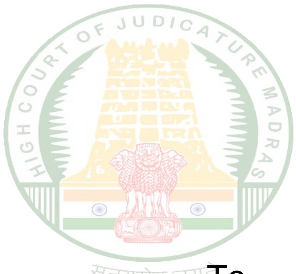
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To
1.The Secretary to Government of
Tamil Nadu, Revenue Department,
Fort St.George, Chennai-9.

2.The Special Revenue Officer,
Chennai Metro Rail Limited,
Chennai Metro Rail Limited (CMRL),
METROS 327, Anna Salai,
Nandanam, Chennai-35.

3.The Managing Director,
Chennai Metro Rail Limited,
METROS 327, Anna Salai,
Nandanam, Chennai-35.

4.The Member Secretary,
Chennai Metropolitan
Development Authority,
Thaalamuthu Natarajan
Maaligai, Gandhi Irwin Road,
Egmore, Chennai-8.

RS

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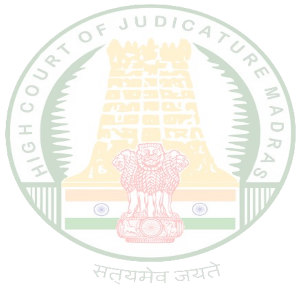
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N.ANAND VENKATESH,J

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WP.No.33116 of 2024&
WMP.No.35874 of 2024

11.3.2025

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