

(2011) 04 MAD CK 0171

In the Madras High Court

Case No : Writ Petition No. 29937 of 2010 and M.P. No's. 2 and 3 of 2010 in Writ Petition No. 29937 of 2010 and M.P. No. 1 of 2011 in Writ Petition No. 713 of 2011 and M.P. No's. 1 and 2 of 2011 in Writ Petition No. 2951 of 2011

B. Ramesh Babu

APPELLANT

Vs

The Secretary, Planning, Development and Special Initiatives
Department, Chennai Metro Rail Limited and The Registrar,
Tamil Nadu Veterinary and Animal Sciences University

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0171

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : Rubert A. Barnabas, for M. Maharaja, in W.P. No. 29937 of 2010, Elephant Rajendran, for R. Neil Rashan, in W.P. No. 713 of 2011 and K. Sellathurai, in W.P. No. 2951 of 2011, for the Appellant; P.S. Raman, General, assisted by, J. Raja Kalifulla, G.P. and Ramajagadeesan, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J.—W.P. No. 29937 of 2010

This writ petition, in the nature of public interest litigation, has been filed by the Petitioner seeking issuance of mandamus or any appropriate order

directing the Respondents to forbear from acquiring the land being S. No. 3871/1 and 3871/3 of Mylapore Village measuring an area of 9.912

acres, which belongs to Tamil Nadu Veterinary and Animal Sciences University for the purpose of construction of Metro Head Quarters in the

City of Chennai.

2. W.P. No. 713 of 2011

This writ petition has been filed for the issuance of a Writ of Mandamus to direct the Respondents to forbear from acquiring the lands in S. No.

3871/1 and 3871/3 of Mylapore Village to an extent of 9.912 acres belonging to Tamil Nadu Veterinary and Animal Sciences University for the construction of Metro Head Quarter.

3. W.P. No. 2951 of 2011

This writ petition has been filed for the issuance of a writ of Writ of Certiorari to call for the records in G.O. Ms. No. 30 dated 22.02.2010,

Planning, Development and Special Initiatives Department issued by the first Respondent and quash the same.

4. Since, all the three writ petitions have been filed challenging the acquisition of the same stretch of land for Chennai Metro Rail Project they have been heard together and disposed of by this common order.

5. The Petitioners' case is that the land measuring an area of 9.912 acres in S. No. 3871/1 and 3871/3 of Mylapore Village belongs to the 3rd

Respondent, namely, Tamil Nadu Veterinary and Animal Sciences University (for short "University"). In the vast extent of land, the Institute of

Poultry Production and Management of Madras Veterinary College is running. There are about 300 old trees with wild animals like spotted deer,

etc. It is alleged that during winter and summer seasons, rare varieties of birds from different parts of the world visit here for breeding purpose. The

Petitioners' case is that the Metro Rail Project is in progress to cater the needs of the passing crowd in the metro city. The first corridor of the

project starts from Washermenpet and ends at Saidapet via Anna Salai. The track is to be built at 12 meter depth in the middle of Anna Salai. It is

found from the plan that the railway station namely, Chamiers Road Railway Station is to be put up underground and Exit-Entry arrangement on

both sides of Anna Salai in the area of 10,000 sq.ft. It is the specific case of the Petitioners that as per the plan, the Metro Rail requires

only 10,000 sq.ft. of land from the premises of the Tamil Nadu Veterinary and Animal Sciences University land. But, all of a sudden, by G.O. Ms.

No. 30 dated 22nd February, 2010, the 1st Respondent granted 9.912 acres of land to the 2nd Respondent and permitted the 2nd Respondent to

enter into the land. The Petitioners sent several representations to the Respondents to defer their proposed construction as it will affect the health of

the people, affect the ecology and will destroy the scenic beauty of the area. Although the 2nd Respondent requires only 10,000 sq.ft. of land, but

it is understood that the entire area of 9.912 acres has been granted to the 2nd Respondent.

6. Petitioners' further case is that within one kilometer distance, an extent of 15 acres of land is available at Saidapet under the direct control of the

same Secretary to Government, Animal Husbandry Department, which is very much nearer to Saidapet Bus Terminus and Saidapet Railway

Station. It is a junction that connects roads leading to various places like Adyar, OMR, Velachery, Tambaram, T. Nagar, etc. Thousands of

commuters are going and coming only from this area. If the Metro Office is put up there, it will serve the purpose of the 2nd Respondent of having

integrated transport facility more effectively and without any hindrance to the public. It is further stated that the land in question does not belong to

the government, but owned by the University. The Government cannot transfer or gift any land belonging to the University to anybody. The 3rd

Respondent, recently, by his letters dated 26th October, 2010 and 9th November, 2010, negated the proposal stating that the said schedule of

the land is the constituent unit of the University as per Tamil Nadu Act No. 8 of 1971 (TNAU) and Act No. 42 (1989) TANUVAS and is

essentially required for the following development works:

(i) At IPPM Campus, Nandanam, only service oriented activities, administration, residential facilities and institutional facilities for international

events and informal educational programmes of TANUVAS will be carried out.

(ii) Certification centre for Animal Products like milk, meat and egg for export promotion.

(iii) University Central Administrative Building.

(iv) Institutional facilities for international events like Convention Centre, Conference Hall, Seminar Hall and International Guest House.

(v) Entrepreneurship Development Programme and Technology Incubation Centre; and (vi) Informal Open and Distance Education Centre.

7. It is the further case of the Petitioner that the 2nd Respondent has issued guidelines for acquiring land. In Guideline No. 46, the 2nd Respondent

has directed the authorities not to acquire lands where schools, hospitals and religious institutions are functioning. When such a clear direction is

given by the acquiring authority, now the same authority has ventured to acquire the University, which is a higher learning organization and is also

an autonomous body. It shows the mala fide intention on the part of the 1st Respondent. Hence, the present writ petitions are filed to forbear the

Respondents from acquiring the land in question.

8. In Writ Petition (W.P. No. 2951/2011), the Petitioner representing Tamil Nadu Federation of Universities Faculty Association filed the writ

petition as public interest litigation contending inter alia that the lands in question is of ecological importance inasmuch as many old trees like neem

and pipal trees are planted inside the campus, which are necessary to be preserved. Moreover, many migrated birds take shelter on the trees and a

small herd of spotted deer numbering 36 has arrived within the campus, which form part of met population of spotted deer in Chennai. It is further

stated that ongoing research in Poultry breeding, hatching, nutrition, management, diseased prevention and post harvest technology is to be

protected and the same cannot be shifted. However, it is stated that the Petitioner is not against the Chennai Metro Rail Project's implementation

of the proposed alignment of the Corridor-I, which passes under the Anna Salai abutting the TANUVAS Land. It is only against the take over of

the entire educational and research institute under the guise of public utility or construction of Metro Head Quarters and other facilities, which can

very well be constructed elsewhere. The Petitioner has stated that Tamil Nadu Veterinary and Animal Sciences University Teacher's Association

filed representation for change of position, but the representation was not responded.

9. The 1st Respondent, namely., the Secretary, Planning, Development & Special Initiatives (S.I.) Department, Government of Tamil Nadu has

filed a counter affidavit. It is stated that the Chennai Metro Rail Project envisages the creation of two corridors (Corridors I & II) under Phase " 1.

Corridor " I starts from Washermenpet and ends at Airport for a length of 23.1 kms and Corridor " II starts from Chennai Central and ends at St.

Thomas Mount Station for a length 22.0 kms. The portions of Corridor " I with a length of 14.3 kms from Washermenpet to Saidapet and

Corridor " II with a length of 9.7 kms from Chennai Central to Anna Nagar will be underground corridors and the remainder elevated. The

detailed sketch showing both alignments is also filed. The Chennai Metro Rail Limited has Special Purpose Vehicle (SPV) formed for the purpose

of implementing the Chennai Metro Rail Project. The project is funded by the Government of India and the State Government by way of equal

equity contribution and subordinate debt. The Government of India had accorded sanction for the project and for its participation in 2009.

10. The 1st Respondent further stated that both the alignments, including stations and other metro rail essential amenities, were finalized and

designed based on detailed engineering design by national and international technical experts, considering Engineering, Economical and

Environmental & Social study. This land has been identified as early as 2005 for the Chennai Metro Rail Project, prepared by Delhi Metro Rail

Corporation as part of land required for the project. This project has been approved by the State Cabinet in 2007 and later by the Union

Government in 2009 on the basis that State Government will make available land identified for the project.

11. It is further stated that the Corridor " I has 16 stations and one of the stations namely, Chamiers Road Station has been located in the Poultry

Land, Nandanam as part of the underground alignment based on the various technical parameters such as the ideal location, catering to all kinds of

traffic and better access to all modes of transport from the station, since all kinds of traffic can converge at this location and inter-station distance of

about 1 km. A significant portion of the station box, exist and entry staircases, escalators and lifts would be located on one half of the front portion

of the said land.

12. It is further stated that apart from the station box and exit/entry, the other half of the frontage of the land transferred to CMRL are required for

the off-road traffic integration facility. Normally, when a high capacity mass transit system commences operation, there is extreme pressure on the

adjacent roads owing to the pickup and drop off of passengers from buses, taxis, autos, two-wheelers to and from the metro rail. As per the DPR

studies, it has been estimated that in 2016 about 7000 passengers will enter or leave the Chamiers Road Station every hour in peak hours.

Thousands of persons are expected to use this metro station on a daily basis, which is a place of work and business leading to T. Nagar through

Venkatanarayana Road, Ratna Nagar, Cenotaph Road, Rangoon Road, Pasumpon Muthuramalinga Thevar Road, all of which lead to key

residential business areas, based on actual origin destination studies undertaken by DMRC while preparing the DPR. This will automatically lead to

severe traffic jams on Anna Salai, significantly slowing down road traffic, which effect would take away and reduce the overall capacity of the road

and rail systems put together. Therefore, it is necessary to take pickup and drop off points for buses, taxis, cars, two-wheelers and autos off the

road beyond the road margin enabling smooth and faster flow of regular road traffic. Effective traffic integration for passengers to switch over from

metro rail to other modes of transport is a key to convenience and comfort of the users. Study conducted shows that success of metro stations is

due to substantial and effective multimodal integration facilities. Effective metro rail is the only solution to mitigate the traffic congestion and air

pollution and the city of Chennai will require careful planning so as to avoid traffic congestion in the roads.

13. Respondents" further case is that various options were studied in locating this station with all other Integrated Metro Rail amenities in other

government lands. However, due to technical constraints the CMRL was not able to locate the station elsewhere. The station would have been

located on a sharp curve in this location, which is not permitted as per international standards and practices laid down for Metro Rail System and

also considering the safety aspects. Further, location of an underground station would have come dangerously close to the existing multi-storeyed

building of the Housing Board and Agricultural Offices undermining the safety of the foundation of those buildings.

14. It is further stated that the High Power Committee constituted by the Government met under the Chairmanship of the Chief Secretary on 9th

December, 2009 and discussed the proposals for the transfer of lands of the University to an extent of 9.912 acres for Metro Rail for locating the

Chamiers Road Metro Station. The land is needed for exit and entry arrangements for this station, Metro Rail Corporate Office, Operations and

Maintenance Service Provider HQ, Training Centre and Backup Operations Control Centre, off-road traffic integration area and multi-level

parking facilities for the public. The High Power Committee examined the proposal in detail and after discussion with the Secretary of the Animal

Husbandry and Fisheries Department, accorded administrative approval for the transfer of the above said land to the Chennai Metro Rail Limited

on permanent basis. Accordingly, the Government has issued orders in G.O. Ms. No. 30 dated 22nd February, 2010. It is also further submitted

that the Secretary to Government, Animal Husbandry Department attended the said meeting and accepted to transfer the land on permanent basis

and the land was transferred on permanent basis only after the requisite consent was obtained. It is further submitted that based on the above

Government Order, the University has given its consent to CMRL project for entering upon the IPPM land belonging to TANUVAS and also

transferred the right of possession over the said land to CMRL vide letter dated 28th December, 2010. Land delivery receipt has been handed

over by the Registrar and CMRL has taken possession of the lands in Mylapore Village Bk. No. 76, T.S. No. 3871-1 & 3B for 9.912 acres

subject to the parent department shifting their office premises on 29th December, 2010. It is stated that the proposed station and other amenities of

Chennai Metro Rail are not affecting the ecological balance. It is submitted that the land has trees of exotic and indigenous mix. Most of the trees

are located in the boundary and less number of trees will fall in the core operational zone. The marginal and outer core trees will be marked as

standard trees and attempts will be made to retain them. In the core zone if any indigenous trees found fit for transplantation, the same will be

transplanted in alternate areas. Moreover, as per policy, one tree felled will be compensated by planting 10 trees in alternate suitable areas. As per

the Environmental Specialist's Report, 216 trees exist in the entire area of which only 28 trees will get affected. It is further submitted that CMRL

has undertaken to prepare an environment management plan for this location to ensure that ecological balance is maintained.

15. Further case of the 1st Respondent is that only a small number of spotted deers are in the campus. These deers would have migrated from

Guindy Reserve Forest, which is now declared as Guindy National Park. It is further submitted that no grazing ground is found in the poultry

research station for these trapped deer. The University had earlier requested the Forest Department for translocating these deers to the nearest

forest reserve. It is submitted that this request can be expended by CMRL by either putting a fence by retaining the deers in the area to ensure

safety of the deer under the care and guidance of a wildlife wing of the Tamil Nadu Forest Department. The Cmrl's environment specialist has

already started preparing a plan for maintaining the ecological balance of the land as per law.

16. It is submitted that the contention of the Petitioner that the usage of land for metro entertainment hall, film shooting and property development

are mischievous and has no truth in it. The proposal for the Chamiers Road Station with entry-exit facilities, multi-modal traffic integration with

adequate parking facilities, Metro Headquarters including Backup Operation Control Centre and Operation and Maintenance Operators"

Headquarters, and Training Centre was submitted to the Government after study by CMRL and after extensive discussions and deliberations by

the Government in the high level meetings consisting of the various heads of the Departments including the University, a decision has been arrived

at. The Government had initially allocated land to TANUVAS at Kattupakkam to re-establish the IPPM facilities. However, based on the request

made by TANUVAS, now the Government has allocated 30 acres of land of Madhavaram Dairy to re-establish the IPPM facilities. CMRL is also

providing compensation for shifting and setting up modern facilities in replacement of the existing facilities. Detailed estimate submitted by

TANUVAS is under the active examination of the Government for approval. For this purpose CMRL has released a sum of Rs. 10 Crores on

30th December, 2010 and another sum of Rs. 10 Crores will be released on 30th January, 2011 in anticipation of approval from the Government.

The Poultry Research facilities can be set up at Madhavaram within a short span of time. But for the present land, it would not be possible for

CMRL to locate the station elsewhere as also provide the facilities for the passengers thereby easing the mounting congestion.

17. It is stated that the allegation that the Government has no authority to transfer the lands to Metro Rail is incorrect. It is submitted that the lands

in Survey Nos. 3817/1 and 3B are revenue lands which were transferred by the State Government to Military in 1888 for growing grass for the

military vide G.O. Ms. No. 8124 dated 6th December, 1888. Thereafter, after 53 years of military occupation, the lands were transferred by

Government in 1941 to the Government Veterinary Department. In 1969, the Government transferred this land to the Directorate of Veterinary

Education and Research vide G.O. Ms. No. 3538/Agriculture Department dated 27th July, 1969. Subsequently, by Act 8 of 1971, this land was

transferred to the Tamil Nadu Agriculture University on 26th September, 1971, and thereafter, by Act 42 of 1989, this land was transferred by the

Government of Tamil Nadu to Veterinary and Animal Sciences University. Hence, this land is a Government land originally vested with the

Revenue Department and Military and hence, Government has full powers to take back such lands following due process of law. These lands are

not lands acquired or purchased by the Tamil Nadu Veterinary and Animal Sciences University directly. Further the Board of the University has

approved the land transfer based on Government Orders, wherein after the land has been handed over to Chennai Metro Rail on 30th December,

2010.

18. The 3rd Respondent, namely, the Tamil Nadu Veterinary and Animal Sciences University, has filed a counter affidavit, stating that the decision

to allocate the land occupied by the Institute of Poultry Production and Management (IPPM) was taken after detailed discussion with the High

Power Committee and after consultation with the government. The decision to shift the existing facility of Poultry Production and Management was

taken in the larger interest of the common public who will get benefitted through the Metro Rail Project. It is submitted that alternate housing

arrangements have been made ready at Madhavaram Milk Colony Campus, TANUVAS for safe harboring of the improved variety of birds

maintained at the Institute of Poultry Production and Management. Arrangements have also been made for shifting and re-locating the scientific Hi-

tech plants, machineries and incubators. Chennai Metro Rail has also assured to take up responsibility to compensate the loss towards damages to

machinery and birds during transit. The Government has arrived at a decision to allocate the land to Metro Rail Project assuring that there will be

no set back in the on-going as well as the future programmes of research by permitting the 3rd Respondent to set up the Institute of Poultry

Production and Management in a larger extent of land at Madhavaram Milk Colony Campus in an extent of 30 acres.

19. Further case of the 3rd Respondent is that the contention of the Petitioner that the Vice Chancellor of TANUVAS objected to the proposal is

not correct. On the other hand, the Vice Chancellor has requested adequate measures for protecting the interest of the institute through provision

of alternate facilities, which is being taken care of by the Government. The possession of the land has already been taken by Chennai Metro Rail

vide Lr. No. 24948/G1/2010 dated 3rd January, 2011 and approved and ratified by the University's Board of Management. It is also further

submitted that the decision to transfer the land to Metro Rail has been taken by the Government in larger public interest. TANUVAS has also

considered the Government Orders and the Board has passed resolution transferring the land to Chennai Metro Rail Limited in return for

compensation to be approved by the Government. In anticipation of Government Orders, Chennai Metro Rail has released Rs. 10 Crores to

TANUVAS on 30th December, 2010 to take up alternate facilities at Madhavaram Milk Colony. As regards the power of the Government to

transfer land is concerned the 3rd Respondent submitted that the said land was transferred by the Revenue Department to Military in the year

1888 for growing military grass farm reserved for Government purposes. Thereafter, in the year 1941, the land was transferred to Government

Veterinary Department. The land was thereafter transferred to the Directorate of Veterinary Education and Research in the year 1969. Thereafter,

the land was transferred to Tamil Nadu Agricultural University in the year 1976 and to the Tamil Nadu Veterinary and Animal Sciences University

in the year 1989. The present decision to transfer the land for Metro Rail Project is the result of a conscious decision in the larger interest of the

common public.

20. Lastly it is stated that there is no proposal to shift the Institute of Poultry Production and Management to Kattupakkam. The proposal is to shift

to Madhavaram Milk Colony, which is not far off from the Madras Veterinary College located at Vepery. Due to this, there will not be any

inconvenience to the veterinary students and researchers of Madras Veterinary College. The University will take due care of the welfare of the

students relating to educational and research objectives.

21. The moot question that falls for consideration is as to whether the acquisition of the land owned by the University will result in serious damages

to the Poultry Research Station and its research activities going thereon or in the

interest of public at large, the land could be used for Metro Rail

Project by shifting the Poultry Research Station with all facilities, bearing in mind the principle of Sustainable Development.

22. It appears that the Government of Tamil Nadu has constituted a High Power Committee under the Chairmanship of the Chief Secretary,

Government of Tamil Nadu to discuss the proposal of the Chennai Metro Rail Limited for transfer of land of the State

Government/Department/University. The High Power Committee after detailed discussion made a recommendation for the transfer of 9.912 acres

of land in the Poultry Research Station, Nandanam in favour of the Chennai Metro Rail Limited to implement the Chennai Metro Rail Project. The

government by G.O. Ms. No. 30, Planning, Development and Special Initiatives (SI) Department dated 22.02.2010 accorded administrative

approval to transfer 9.912 acres of land allegedly owned by the Department of Animal Husbandry, Dairying & Fisheries Department.

23. Learned Counsel appearing for Petitioner in W.P. No. 29937 of 2010 submitted that one sitting M.L.A. brought a motion before the State

Legislative Assembly protesting the transfer of 9.912 acres of land owned by the University and it was referred to the Secretary to the Animal

Husbandry Department, who in turn referred it to the Vice Chancellor of the University for comments. The Vice Chancellor objected transferring

of 9.912 acres of land to the Metro Rail Project. In spite of serious objections raised by the University the Government issued the order for

handing over possession of the land to the Chennai Metro Rail Limited.

24. Learned Counsel further submitted that when the administrative approval was given for acquisition of 9.912 acres of land, the Commissioner of

Animal Husbandry and Veterinary Science by his letter dated 06.09.2010 informed the Registrar of the University about the government's

decision for handing over the land to Chennai Metro Rail Limited for the construction of Metro Bhavan. The Registrar of the University by his letter

dated 15.10.2010 opposed the said proposal and justified the retention of the Institute of Poultry Production and Management at Nandanam,

Chennai. The University again by its letter dated 09.11.2010 made a representation to the Managing Director, Chennai Metro Rail Limited

opposing the acquisition of its land for the Metro Rail Project

25. However, learned Counsel submitted that the University represented the Government not to acquire or transfer 9.912 acres of land owned by the University and not to shift the existing Poultry Research Station from that place. The Deputy Secretary to the Government, Planning, Development and Special Initiatives (S.I.) Department, Secretariat, Chennai by his letter dated 15.11.2010 informed the University that only 3 acres of land can be spared for the University.

26. On the other hand, Mr. P.S. Raman, learned Advocate General made elaborate submission and stated that as part of the Chennai Metro Rail Project, the land in dispute is required for constructing a part of the UG station, multi-modal traffic integration point (bus, auto, taxi pickup/drop off zone), multi level parking, back up operation control centre and head-quarters buildings for operations purposes of CMRL, which are required for safe functioning of vital operations of the Metro Network. Further the facilities are part of the Chennai Metro Rail Project and sanctioned by the Union and State Cabinets and are not a project by itself. Hence, CMRL Headquarters do not fall under item 8(a) of the Notification of the Ministry of Environment and Forest dt.14.9.2006.

27. Learned Advocate General further submitted that another major point that went into deciding whether to go underground, despite its higher cost, was to avoid and minimize over-ground impacts such as tree cutting and impact on heritage structures. Refuting the submission of the Petitioner that under MOEF Notification 2006, public consultations have to be done for all projects that fall under Item 8 of the Schedule to the notification, learned Advocate General submitted that Metro Rail Projects have not been included in the Schedule of the above notification specifically because these are carbon-saving public transport projects. Learned Advocate General submitted that Chennai Metro Rail Project has taken the initiatives to prepare a Resettlement Action Plan (RAP) for Projected Affected Families and has completed public consultations along the metro corridors exclusively for Environment Impact Assessment and has also conducted 13 public consultations from July 2008 to November 2008. The consultations have been minted and communicated to JICA, which has emphasized the importance of Environment mitigation measures and hence the EIA was done with due diligence.

28. On the issue of alienation, learned Advocate General submitted that the High Power Committee constituted by State Government as per G.O.

Ms. No. 148, Planning, Development & Special Initiatives Dept. dt.20.11.2009 shall consider and take decisions/make recommendations to the

Government. Further, the High Power Committee chaired by the Chief Secretary to Government approves the project land requirement and

necessary G.O is issued by the State Government, and the Collector while sending permanent, alienation proposal encloses public notice certificate

from the Revenue Inspector.

29. Learned Advocate General submitted that Environment Impact Assessment (EIA) for the Chennai Metro Rail Project has been done by

DMRC through RITES Ltd and report finalized in May, 2008. It is also learnt that DMRC has not obtained the Environment Clearances for its

various project works. In addition to EIA report, Noise Impact Assessment has been done in August, 2008 for Chennai Metro Rail Project by

Tamil Nadu Pollution Control Board and Centre for Environmental Studies, Anna University, Chennai. Further, a report on Vibration Impact

Study for CMR project has been prepared by Geo Technical Engineering Division, Department of Civil Engineering IIT Madras in September,

200 and baseline ambient noise level monitoring is being done by CMRL along the alignment as part of a permanent noise monitoring system.

30. On Environment friendly features of the Metro Rail, learned Advocate General submitted that metro system requires only 20% of the energy

used by a road based system. It reduces air pollution and creates less noise. The metro rail project in Chennai will result in carbon emission

reduction due to use of regenerative braking systems in the Rolling Stock. Further, the occupation of road space will be less. Learned Advocate

General further highlighted the use of Metro Rail and the avoidance of heavy vehicular traffic.

31. Learned Advocate General submitted that the Environmental Impact Assessment report had been posted on CMRL web site for public view.

Measures have been taken in the project to mitigate the impacts, if any, due to constructions by way of a detailed " Safety, Health and

Environment Manual" to be implemented by the contractors of CMRL. Learned Advocate General submitted that wherever trees need to be

removed, CMRL has been examining the possibility of transplantation failing which, CMRL will plant 10 trees in lieu of a tree cut under unavoidable circumstances.

32. In the facts of the present case, as stated above, the question that needs to be answered is whether the acquisition of land for the purpose of Metro Rail Project and providing sufficient land for shifting of the Poultry Management with all facilities will meet the requirement of law of Sustainable Development. At this stage, first I would like to refer some of the decisions of the Supreme Court where principles of law have been laid down.

33. In the case of Karnataka Industrial Areas Development Board Vs. Sri. C. Kenchappa and Others, a writ petition was filed by the agriculturists, who were affected by the acquisition of lands of different villagers, seeking a direction upon the Karnataka Industrial Areas Development Board to refrain from converting the lands of the agriculturists for any industrial or other purposes and to retain the lands for the use of the Respondents/agriculturists for grazing their cattle. A Division Bench of the Karnataka High Court allowing the writ petition passed an order directing to leave the land for one kilometer as a buffer zone from the outer periphery of the village in order to maintain a "green area" towards preservation of land for grazing of cattle. The Court held that this measure would preserve the ecology and maintain ecological equilibrium. The matter ultimately came up before the Supreme Court. The Supreme Court after discussing the environmental and constitutional provisions and various other aspects, and further discussing the various earlier observations made by the Supreme Court, allowed the appeal filed by the Appellant " Karnataka Industrial Areas Development Board by imposing certain directions. The Supreme Court reiterated its earlier view that while economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; but at the same time, the necessity to preserve ecology and environment should not hamper the economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care by ensuring the

protection environment (vide., Indian Council for Environment-Legal Action

Vs. Union of India (UOI) and Others, .

34. In the Karnataka Industrial Areas Development Board Case (supra) their Lordships observed:

67. A nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No

Government can cope with the problem of environmental repair by itself alone; people's voluntary participation in environmental management is a

must for sustainable development. There is a need to create environmental awareness which may be propagated through formal and informal

education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental

issues, the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the

enlightenment but a biophysical fact.

102. Sustainable use of natural resources should essentially be based on maintaining a balance between development and the eco-system. Co-

ordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of

sustainable use, the problem of environmental degradation cannot be solved.

35. In the case Vellore Citizens Welfare Forum Vs. Union of India and others, the Supreme Court observed:

10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the

answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of

1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called

"Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms G.H. Brundtland and as such the report is

popularly known as "Brundtland Report". In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund

for Nature, jointly came out with a document called "Caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit

held in June 1992 at Rio which saw the largest gathering of world leaders ever in

the history " deliberating and chalking out a blueprint for the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and development initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution. During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.

36. In Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, the Supreme Court followed its earlier decisions and held as follows:

(Paragraphs - 70, 71, 83, 84 and 87)

70. This Court in Essar Oil Ltd. Vs. Halar Utkarsh Samiti and Others, was pleased to expound on this. Their Lordships held: (SCC p. 406, para 27)

27. This, therefore, is the [sole] aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the

two since neither one can be sacrificed at the altar of the other.

71. A similar view was taken by this Court in Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, (SCC p. 296,

para 31) where Their Lordships said: "While economic development should not be allowed to take place at the cost of ecology or by causing

widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper

economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at

the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

83. On the other hand, we cannot also shut our eyes that shelter is one of the basic human needs just next to food and clothing. Need for a national

housing and habitat policy emerges from the growing requirements of shelter and related infrastructure. These requirements are growing in the

context of rapid pace of urbanisation, increasing migration from rural to urban centers in search of livelihood, mismatch between demand and

supply of sites and services at affordable cost and inability of most new and poorer urban settlers to access formal land markets in urban areas due

to high costs and their own lower incomes, leading to a non-sustainable situation. This policy intends to promote sustainable development of habitat

in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices.

84. The world has reached a level of growth in the 21st century as never before envisaged. While the crisis of economic growth is still on, the key

question which often arises and the courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental

protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural

resources for the benefit of humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The

growth and development process are terms without any content, without an inkling as to the substance of their end results. This inevitably leads us

to the conception of growth and development which sustains from one generation to the next in order to secure "our common future". In pursuit of

development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely

observed. As Prof. Weiss puts it, "conservation, however, always takes a back seat in times of economic stress". It is now an accepted social

principle that all human beings have a fundamental right to a healthy environment, commensurate with their well-being, coupled with a

corresponding duty of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware

of them equally.

87. This Court in Dahanu Taluka Environment Protection Group and Another Vs. Bombay Suburban Electricity Supply Company Ltd. and

Others, held (at SCC p. 541, para 2) that the Government concerned should "consider the importance of public projects for the betterment of the

conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation

and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects

that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting

objectives".

37. Indisputably, because of expansion, rapid development and growth of Chennai City there has been severe traffic congestion in almost all of the

roads, particularly, in the roads leading to T. Nagar there is extreme pressure on the adjacent roads owing to pick up and drop off of the

passengers from the buses, taxis, autos and two wheelers. As per the studies conducted by the DPR, it has been estimated that by the year 2016

in the peak hours about 7,000 passengers will enter or leave the Chamiers Road Station every hour. Thousands of passengers are expected to use

this metro station on the daily basis, which is a place of work and business leading to T. Nagar through Venkatanarayana Road, Ratna Nagar,

Cenotaph Road, Rangoon Road and other adjacent roads. It has, therefore, become an urgent need of the day to switch over to Metro Rail for

the convenience and comfort of the public. Equally, it cannot also be disputed that Metro Rail is the only solution to mitigate the traffic congestion

and air pollution. Hence, in our considered opinion, the decision taken by the

Respondents to shift the existing facilities available to the Poultry

Production and Management is in the larger interest of common public, who will be benefited through this Metro Rail Project.

38. Hence, this Court allow the Metro Rail Project to be completed on the land in question on the following conditions which shall be strictly

followed:

(i) All endeavours shall be made to retain all the trees, and only those trees, which come in the core operational zone shall be cut.

(ii) Those indigenous trees which are cut shall again be planted in the ratio of 1:10 as per the policy of the Respondents. As stated by the first

Respondent only 28 trees may get affected in the Station Operational Area. As per the undertaking, the second Respondent-Chennai Metro Rail

Limited (CMRL) shall prepare an Environment Management Plan for this location and ensure that the ecological balance shall be maintained.

(iii) The lands acquired shall not be used for metro-entertainment hall, film shooting and property development etc. Only the basic requirement and

amenities like Chamiers Station with Entry-Exit facilities, multi-modal traffic integration with adequate parking facilities, Back-up Operation Control

Centre and maintenance operator headquarters.

(iv) The CMRL shall pay compensation of Rs. 50 crores for the purpose of establishment of Institute of Poultry Production and Management with

all modern facilities. The Poultry Research Facility shall be completed within a period of six months from today.

(v) As admitted by the Respondents, for the purpose of this Metro Rail Project, the lands owned by the schools, hospitals and religious institutions

shall as far as possible be avoided from acquisition proceedings. However, if inevitable, the acquisition proceedings shall be to the minimal extent

required for the project and not more. Further, the lands so acquired shall not be used for any commercial purposes for the benefit of private

corporate houses.

(vi) All endeavours shall be made by CMRL and the Forest Department to protect the wild animals, if any, including the deers for translocating

them to the nearest forest reserve and also by putting a fence in order to retain the deers in the area and to ensure their safety under the care and

guidance of Wild Life Wing of Tamil Nadu Forest Department.

(vii) As undertaken by the Respondent, separate arrangement shall be made for safe harboring of the improved variety of birds maintained at the

Institute of Poultry Management. Further in case of damages to any machineries, scientific hi-tech plant and incubators, including birds during

transit and shifting, the Respondent-CMRL shall pay adequate damages and compensation that may be assessed by the competent authority.

39. With the above observations and directions, all the three writ petitions are dismissed. There will be no order as to costs. Consequently,

connected miscellaneous petitions are also dismissed.