

**(1997) 04 MAD CK 0020**

**In the Madras High Court**

**Case No : W.A. No's. 40 and 88 of 1996**

General Manager, Southern Railway

APPELLANT

Vs

Chintadripet Boys Higher Secondary School and Others

RESPONDENT

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**Date of Decision : 28-04-1997**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : AIR 1998 Mad 180**

**Hon'ble Judges : S.M. Siddickk, J;A.R. Lakshmanan, J**

**Bench : Division Bench**

**Advocate : R. Krishnamoorthy for K. Venkateswara Rao, for the Appellant; G. Kathirvelu, for Respondent No. 1, Govt. Pleader on behalf of Respondent No. 2, Ramanlal and M.S. Govindarajan, for the Respondent**

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## **Judgement**

A.R. Lakshmanan, J.—Both the above writ appeals were filed against the order of Venkatachalam, J. made in Writ Petition No. 8953 of

1995, dated 3-11-1995. The said Writ Petition was filed by the correspondent of Chintadripet Boys Higher Secondary School (hereinafter called

as the school) to quash the proceedings in W.D.C. No. 3C/419/83, dated 10-8-1984, on the file of the Commissioner of Corporation of Madras.

Under the impugned order, dated 10-8-1984, the Special Officer Council has resolved to cancel the lease of Corporation Public land, measuring

7773 sq. metres in R.S. No. 459/2 part of Chintadripet, which was leased to the School and relinquish the land back to the Collector of Madras

for ultimate transfer to Metropolitan Transport Project Railways for implementing the Scheme. The impugned order, dated 10-8-1984 of the

Commissioner, Corporation of Madras reads as follows:

From

The Commissioner,  
Corporation of Madras,  
Madras-3.

To

The Correspondent,  
Chintadripet High School,  
Mount Road, Madras.

W.D.C. No. SC/419/83, dated 10-8-1984

Sir,

Sub: Mass Rapid Transit System Meeting held on 6-7-1984 at the Government Secretariat Transfer of Corporation Public land in Chintadripet

area to Metropolitan Transport Project Railways Decision of the S.O. Council Communicated.

Ref: 1. G.O.Ms. No. 430 (Housing and Urban Development Department), dated 6-6-1984.

2. Discussion held on 6-7-1984 at the High level Co-ordination committee meeting.

3. Resolution of the S.O. Council No. 897/84, dated 30-7-1984.

...

An extent of about 62 grounds of Corporation Public land in R.S. No. 458 and 459 part of Chintadripet were leased to Chintadripet Secondary

School Association by a Registered Deed No. 838 of 1936 used as play ground subsequently, on the representation made by the T.N.S.C.B., an

extent of 27 grounds 344 sq. ft. in R.S. No. 458 of Chintadripet adjacent to Fire Proof Tenements were relinquished to Collector of Madras in

Resolution of the Council No. 1365/72, dated 22-12-1972 for ultimate transfer to T.N.S.C.B., cancelling the portion of lease of 27 grounds 343

sq. ft. The communication of relinquishing the land was also intimated to the Correspondent and the Secretary of Chintadripet Secondary School

Association, in this Office letter WDC SC/1137/72, dated 29-7-1972.

The actual land under occupation on lease by Chintadripet Secondary School Association is only 34 grounds 2056 sq. ft. (7773 sq. meters )

New the Government have constituted a Committee in G.O.Ms. No. 430 Housing

and Urban Development Department, dated 6-6-1984

consisting of officers of various departments involved in Mass Rapid Transit system in Madras City for speeding of the project.

During the high level co-ordination committee meeting held on 6-7-1984 in the Conference Hall of Secretariat it was decided to hand over the land

belonging to Corporation of Madras in Fort and Chintadripet area as quickly as possible for execution of Mass Rapid Transit system.

The Chief Administrative Officer has also furnished plans showing the lands falling in alignment proposed scheme in Chintadripet area. According

to the Sketch furnished by the Chief Administrative Officer MTP Railway are 17027 sq. metres in Survey Nos. 458 and 459 of Chintadripet. In

view of the urgency and important of the scheme, as decided at the High Level Co-ordination Committee Meeting, the Special Officer Council has

resolved to cancel the lease of Corporation Public Land, measuring 7773 sq. metres in R.S. No. 459/2 Part of Chintadripet, which was leased to

Chintadripet Secondary School Association and relinquish the land back to the Collector of Madras for ultimate transfer to Metropolitan Transport

Project Railways for implementing the scheme.

2. In the year 1936, a registered Lease Deed, dated 27-3-1936 (D.O.C. No. 838/36) was executed by the school in favour of the Corporation of

Madras, as per which the entire extent of the land measuring 62 grounds have been leased out on a consolidated rent of Re. 1/- without mentioning

any period. According to the school, the said lease is a perpetual lease in nature and content. In the year 1972, the school surrendered 26 grounds

out of the entire extent of 62 grounds to the Collector of Madras for construction of fire proof tenements by the Tamil Nadu Slum Clearance

Board to economically weaker section of the society, since there was encroachment by Slum Dwellers. The rest of the extent of the land, viz.,

about 36 grounds is still in the occupation of the school. A committee was constituted for "Mass Rapid Transit System" in the city of Madras

(hereinafter referred to as the MRTS). In the meeting arranged, the Corporation of Madras had agreed to hand over possession of the lands for

execution of the MRTS. The lands leased out to the School is one among the lands agreed to be handed over possession by Corporation of

Madras. The Corporation of Madras sent a communication, dated 10-8-1984,

stating that the lease in favour of the School was being cancelled.

Challenging the action of the Corporation of Madras, the School filed a writ petition and contended that it is not open to the State and the

Corporation of Madras to abruptly and in arbitrary manner resume possession unilaterally and hand over the same to Railway Authorities for

having a Railway Station and that they are also estopped by the principles of promissory estoppel in any way disturbing the rights of the school in

the plot of land used, as play ground and the continued user of the same. The Southern Railway filed its detailed counter-affidavit, opposing

disclaim of the school. They also filed a petition to vacate the stay granted by this Court in W.M.P. No. 13410 of 1985 in W.P. No. 8953 of

1985, dated 28-8-1985. The Corporation of Madras also filed a separate counter affidavit, through its Commissioner. It was contended on behalf

of the Corporation that the writ petition was wholly misconceived, that the relief as sought for by the school was not sustainable in law both

factually and legally and that condition Nos. 3 and 4 of the lease deed specifically stipulate that if the demised land is required for any important

purpose, it is open to the Corporation to resume the land for such purpose. It was also stated that if the land is required for a mere important

purpose, it is open to the Commissioner to resume the land for such purpose and on such resumption the land vests with the corporation and

becomes its absolute property. That apart, the demised land which was resumed under the impugned order was handed overbade to the

Government for ultimate transfer to the Railways for MRTPS in the City of Madras, which is in the best interests of the general public at large,

since the said scheme involves an expenditure of more than Rs. 27 crores, Sathidev, J. passed the following common order, dated 23-9-1985:

There could be no dispute that the resumption of the land was for the construction of a Railway Station, which forms part of the Mass Rapid

Transit system, which is being put up by the third respondent. The petitioner claims that the area involved was used as a playground and the same

having been granted in its favour pursuant to an agreement, dated 13-2-1936, without opportunity and a proper application of mind as to whether

the agreement should be terminated or not, an arbitrary decision having been arrived at by the second respondent-Corporation, this is a fit matter,

where the order of interim stay deserves to be continued.

3. Mr. Lakshminarayana Reddy, learned Counsel for the petitioner, relying upon the contents of the counter affidavit filed by the Corporation of

Madras, would state that, the user of the land as a playground is undoubtedly a public purpose, and when alternative areas are available for

locating the railway station or part of MRT system, there is no need to dispossess the petitioner arbitrarily and by a snap order of dispossession.

He would state that providing a play ground is a more important purpose than constructing a railway system in Madras.

4. Clause 3 of the agreement provides that, if the demised land is required for any more important purpose, it is the opinion of the Commissioner,

which will be final. There could be no dispute that the construction of MRT System is of paramount importance for the commuting public in this

city, and it is intended to benefit several lakhs of citizens. Depending upon the alignment of the track, certain places having been chosen, this Court

considers that, undoubtedly, the land had been resumed for a more important purpose than retaining a playground.

5. As for any alternative playground for the school, it is an aspect, which the petitioner will have to approach the authorities, and secure suitable

relief.

6. Here again, learned Counsel for the petitioner would state that, in the light of the counter-affidavit filed, this Court should fix a time limit, within

such a playground should be provided. That is not the scope of the writ petition, nor is an aspect on which any outer limit could be prescribed by

Court. Hence, the order of interim stay is hereby vacated, resulting in W.M.P. No. 13410 of 1985 being dismissed and W.M.P. Nos. 14831 and

14948 of 1985 being ordered.

6. Against the said order, the school filed Writ Appeal No. 398 of 1986 and by Judgment, dated 2-3-1987, this Court dismissed the said writ

Appeal.

7. After the order of this Court, the Railways, constructed Railway Station and Electrical Sub Station on the land and several crores of rupees have

been spent on that score. They have also been now opened for public use and the trains also have been running on the track. The writ petition

came up before this Court for final disposal before Y. Venkatachalam, J. By his

order dated 3-11-1995, the learned Judge has made the following order:

This writ petition is filed by the writ petitioner to quash the order passed by the second respondent.

2. In support of the writ petition, the writ petitioner filed an affidavit and in the said affidavit, the writ petitioner has narrated the facts and circumstances of the case, which led to the filing of this writ petition.

3. The arguments of learned Advocate for the writ petitioner together with the arguments of the learned Advocate for the respondents were heard.

4. The point for consideration is: whether there are any valid grounds to allow the writ petition or not.

5. I have gone through the materials available on record and also I have gone through the contents of the affidavit filed by the writ petitioner and the contents of the counter affidavit of the respondents. The crucial point in this case, according to me is before acquiring the premises of the subject-

matter of the writ, mandatory provision is that the department should give notice to the other side and the department should obtain objections, if

any, from the opposite party. Here it is an admitted fact that the department did not give due notice to the opposite side, who is the writ petitioner

herein. Therefore, the mandatory provision has been violated and the order passed, by the second respondent cannot be sustained under law and it

is liable to be set aside.

Aggrieved by the above order, both the Southern Railway and the Commissioner of Madras Corporation have filed writ Appeals Nos. 40 and 98

of 1996 respectively.

8. We have heard Mr. R. Krishnamoorthy, learned Senior Advocate for Mr. K. Venkateswara Rao and Mr. G. Kathir for the School, learned

Government Advocate for the Collector of Madras and Mr. Ramanlal, learned Counsel for the Corporation of Madras. Learned Senior Counsel

argued that when the lands were leased to the school by the Corporation of Madras under a registered lease deed, dated 13-2-1936, subject to

the terms and conditions stipulated therein and under the terms of the said lease deed, it is open to the Corporation of Madras to determine the

lease and resume possession of the land, Learned Senior Counsel invited our attention to the Inventure made between the Corporation of Madras

(landlord) and the school (tenant). Under the lease deed, the tenant was entitled to hold the lands, subject to the terms and conditions specified in

the Indenture and paying therefore the consolidated rent of Re. 1/- only. Under the deed, the tenant has agreed with the landlord not to use the

demised land for any purpose other than as a playing round for the pupils of the school and not to erect or build or permit to be erected or built

any permanent structures on the demised land except with the consent in writing of the Commissioner of the Corporation of Madras and not to do,

cause, permit or suffer to be done upon the demised land which may be or become a nuisance or annoyance or cause damage to the landlord or

occupiers of the neighbouring lands or houses. A proviso was added to Clause (c) of the lease deed, which provides that it shall be lawful for the

Commissioner of the landlord to re-enter upon the demised premises or any part thereof in the same of the whole and resume and repossess the

same. Conditions Nos. 3 and 4 of the lease deed, which are relevant for consideration and for the purpose of finding out whether the landlord is

entitled to terminate the lease need extraction:

(3) If the demised land is required for any more important purpose or should any necessity arise, the opinion of the Commissioner of the landlord

or the council of the landlord is to be final as to whether the land is to be required for any more important purposes or any necessity has arisen.

(4) In the event of such resumption, the buildings and all structures, if any, on the demised land shall vest and become the absolute property of the

landlord and the tenant shall not be entitled to claim or to be paid any compensation in respect thereof....

A reading of the above two clauses would go to show that under the terms of the lease if the land is required for any more Important Purpose, or

in case of necessity, it is open to the Commissioner of Corporation of Madras to Resume the said land for such purpose and on such Resumption,

the Land vests with the Landlord. The learned single Judge has however, failed to notice that the cancellation of the lease was done in accordance

with the terms and conditions of the lease and that there was valid resumption of the land by the Corporation of Madras. The learned single Judge

was of the view that there was no due notice to the petitioner, that there was violation of mandatory provision and that the order of the

Commissioner of Corporation is not sustainable. In this context, we are of the view that the learned single Judge has failed to see that the rights and obligations are governed by the contract and if action was taken in consonance with the terms of the agreement, the rules of natural justice could not operate. Even assuming and without admitting there was breach of the terms of contract in terminating the contract of lease, the School is not entitled to any opportunity to show cause notice against the cancellation of the lease. We are also of the view that the observation of the learned single Judge that there was violation of the mandatory provision is not sustainable either on facts or on law since the lease was validly terminated in terms of Clauses 3 and 4 of the Agreement. Hence, the question of violation of any mandatory provision does not arise. As rightly pointed out before us by Mr. R. Krishnamoorthy, learned Senior Counsel and ably assisted by Mr. K. Venkateswara Rao, that the rights and obligations of the parties are purely governed by the terms of contract and hence, the learned single Judge has erred in holding that there is violation of the mandatory provisions. In our considered view, the rules of natural justice cannot operate upon powers which are governed by the terms of the agreement/contract and that the questions of the contractual obligations cannot be gone into in exercise of the powers under Article 226 of the Constitution of India. The terms and conditions of indenture of demise in favour of the school and in particular proviso to Clauses 1 and 3 are fully complied with and there cannot be any legal basis for impugning the order, dated 10-8-1984. In fact, after the termination of the lease the possession of the land was handed over to the Railways and the Railways entered upon the land and laid the Railway line and constructed the Railway Station and sub station on the land and the trains also started running on the track. These subsequent events, after the stay was vacated by Sathiadav, J. on 23-9-1985, which was also confirmed in W.A. No. 390 of 1985 were not taken note of by the learned single Judge. The learned single Judge has also not given sufficient reasons in his order on the merits of the case. A perusal of the lease does not also contemplate giving any notice before the landlord enters upon the land. The provisions of the Government Grants Act and the Transfer of Property Act do not apply to any transfer of land by or on behalf of the Government. In our view, the lease has to be construed as a tenancy at will and the demand for

possession by the landlord is sufficient. The contract between the parties is purely as private contract and not a statutory contract and the field of

contract is not governed by any statute and in such circumstances, as the agreement was cancelled in terms of the contract no opportunity to show

cause against the cancellation need be given to the school.

9. Both the writ appeals, in conclusion we see are liable to be allowed as prayed for and the order of the learned single Judge in W.P. No. 8953 of

1985, dated 3-11-1995 is liable to be set aside. The following are our views for taking the said views:

(a) The lands now required for the project was already resumed by the Corporation of Madras and handed over to Metropolitan Transport

Project (Railways) by the Government of Tamil Nadu at free of cost in 1985 itself.

(b) The alignment passes through the Corporation land which was on lease to the school and this was used as a playground by the School. In view

of need of this land by the Railways for the construction of the proposed MRTS line, the lease was terminated by the Corporation of Madras and

possession was handed over to the Collector of Madras, who in turn handed over the land to the Executive Engineer, MRTS as early as on 20th

May, 1985;

(c) The MRTS is a beneficial scheme aimed at easing the traffic congestion in the Metropolitan city of Madras. The said scheme is being

implemented in the city of Madras by the Metropolitan Transport Project (Railways) duly cleared by the Planning Commission and in furtherance

of this object, action had already been taken and several pieces of land including the land in question has been handed over to the Railways;

(d) Pursuant to the possession taken on 20th May, 1985, the Railways have entered upon the land and started the construction work and carried

out the project work on and from 21st May, 1985 onwards. The said scheme involves an expenditure of more than Rs. 27 crores. The contention

of Mr. Kathirvelu, learned Counsel for the school that the perpetual lease granted to the school cannot be terminated all of a sudden and

possession cannot be taken, cannot be accepted and acted upon. As noticed supra, the lease was subject to the terms and conditions and more

particularly conditions 3 and 4 as set out in the said lease made it clear that the lease in question is not perpetual and the Corporation of Madras

can cancel it and resume possession of the land at any Point of time for a more important and urgent purpose.

(e) Obviously, the purpose for which the land was handed over to the Railways is far more important than for the purpose for which it was used by

the school. As such, the School cannot claim any right over the land, urging that the lease was perpetual and that the Corporation cannot resume

possession of the land. It was only in terms of the lease deed of the year 1936 with an intent of 26 grounds of land was resumed by the

Corporation of Madras in the year 1972. The land was required for the purposes of Constructing fire proof tenements to the Tamil Nadu Slum

Clearance Board to the economically weaker sections of the Society and it is in the same manner that the Corporation has now resumed

possession of the demised land. Therefore, it is futile to contend that the lease in question is a perpetual one and that the Corporation has no power

to resume.

(f) MRTS is a vital scheme aimed at removing traffic congestion in the Metropolitan city of Madras. The said scheme is implemented in the city by

the Metropolitan Transit Project (Rail ways) alter clearance by the Planning Commission. As the land in question was rightly resumed by he

Corporation of Madras for a more important purpose in accordance with condition Nos. 3 and 4 of the lease deed, the contention of Mr.

Kathirvelu, learned Counsel for the school that it is not open to the Corporation to resume possession unilaterally and hand over the same to the

Railways, has no merit, since the impugned order cancelling the lease was passed strictly in terms of the conditions stipulated therein. Therefore, it

is futile on the part of the school to allege that the Railways and the Corporation of Madras are estopped by the principles of promissory estoppel

and that they have no right in the plot of land used as a play ground, when in fact there was no such promise as alleged by the school;

(g) As per the pre plan alignment for locating the MARTS the resumed site is the only proper location and the same cannot be deviated. There is

absolutely no violation of any of the principles of natural justice, as alleged by the School.

10. In fine, both the writ appeals succeed. However, Mr. Kathirvel, learned Counsel for the school made an appeal to this Court that as per the

statement made in the counter affidavit filed by the Commissioner of Corporation of Madras, dated 16-9-1985 (paragraph 4) the Madras

Metropolitan Development Authority or the Commissioner of Corporation of Madras or the State Government may be directed to provide a

suitable alternate site for locating the play ground of the school in a near by area, Learned Counsel for the School further pointed out that the

school also by their letter, dated 26-9-1984 sought for such an alternate site for a play ground. There is no doubt that the purpose for which an

alternate site is sought for cannot be brushed aside, as the State Government in the year 1929 itself have decided to implement the scheme of

Compulsory Physical Education. Therefore, the State Government or the Corporation of Madras or the Madras Metropolitan Development

Authority may sympathetically consider the request for an alternate site for locating a play ground to the school and do the needful.

11. Both the writ appeals shall stand disposed of in the above terms. However, there will be no order as to costs.