

(1984) 02 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No's. 1617 and 1789 of 1981

Saint Joseph Matriculation School

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 09-02-1984

Acts Referred:

Land Acquisition Act, 1894 — Section 16

Citation : (1986) ILR (Mad) 368

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : B.R. Dolia, Aiyar and Dolia, for the Appellant; S. Jagadeesan, Government Advocate, R. Krishnamurthy, General, R. Muthukumrarswamy, V. Ramajagadeesan and Kamini Ramakrishnan, R.S. Venkatachari and M. Shakir Ali, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—The facts leading to the filing of the writ petitions are as follows. The following lands in Koothapakkam village, Caddalore taluk

were acquired in April, 1970 for the purpose of construction of school buildings for Government Basic Training School for Women at

Tirupapuliya.

R.S. Extent New Extent Name of land owner

No. Hec. R.S. No. Hec.

(1) (2) (3) (4) (5)

16/1 3/40 3.8/2 1.3715 Sri Devanathaswamy

Devasthanam,

Thiruvandhipuram.

16/2 1/60 29/7 0.65.0 Parvathi Ammal and
Annasa Pihlai,
Thirupapuliyur.

16/3 0.64 29/9 0.26.0 T.M. Krishnaswami
Pillai,
Thirupapuliyur.

16/4 0.13 19/8 0.05.5 Muthukurnaraswami
Chettiar
Thirupapuliyur.

After following the procedure under the Land Acquisition Act, possession was handed over to the Education Department on 30th June, 1970.

Since the, lands were not put to use for the purpose for which they were acquired viz., the construction of school buildings for Government Basic

Training School for Women at Tirupapuliyar it, was ordered in District Revenue Officer's K. Dis. No. 12239/74, dated 2nd July, 1974 for the

resumption of the lands. In the meanwhile, the former Executive Officer of Devanathasami Devasthanam of Thiruvendhipuram applied to

Government on 13th September, 1974, requesting to cancel the award proceedings and to reassign the lands to the temple on the ground that the

lands acquired are not put to the use for the purpose for which they were acquired. On his request, the Government in their Memo No.

68811/B3/74-1, Education Department, dated 26th August, 1974, called for the remarks of the District Revenue Officer, Cuddalore. After getting

a report from the Chief Educational Officer, Cuddalore stating that the acquired sites are required for the construction of a school building for Blind

and that the matter is under consideration of the Director of School Education, one District Revenue Officer sent a report to the Government on

25th May, 1976. But the Government in their memo, dated 24th November, 1976 negated this proposal of the Director of School Education. It

was stated by the Government that the lands acquired were not required for the Government School for the Blind at Cuddalore. Consequent to

this the Director of School Education was called upon to relinquish the lands. The Chief Educational Officer, Cuddalore, ultimately after some

correspondence relinquished the land acquired on 8th January, 1977.

2. The District Revenue Officer, by his letter, dated 2nd March, 1978 requested instructions from the Government in Education Department for the disposal of lands under Board Standing Order 90, paragraph 32. When that matter was under consideration, the writ Petitioner repressed by the mother superior of Saint. Joseph's English School at Tirupapuliyur in her letter dated 7th May 1978, requested the Collector for alienation of the above acquired lands in favour of the institution. On this letter, the then Collect of in his reference, dated 8th July, 1978 sent a report to the Secretary to Government, Education Department through the Board of Revenue stating that the acquired lands might be alienated in favour of the institution the writ Petitioner. This was on condition that the value of the land shall be collected at the value at which they were acquired. It was also stipulated should the Court award any enhanced compensation that shall be bound by the institution. The said G.O. is G.O. No. 404, dated 14th March, 1979, which is extracted:

An extent of 5.77 acres of land in Koothapakkam village in Cuddalore Taluk, was acquired in April, 1970 and possession was given to Education Department on 30th June, 1970 for the construction of building for the Government Basic Training School for Women at Tirupapuliyur, while the proposal for construction of buildings was under consideration by Government Orders were issued in the G.O. second read above amalgamating the Government Teacher's Training Institutes in the various stations of the Revenue District and one Government Teacher's Training Institute for women were maintained in each Revenue District in order to effect economy in expenditure. Based on the above orders the Government Teachers Training School for women at Tirupapuliyur was closed with effect from 1st June, 1978. In view of this, the Director of School Education suggested the land in question might be transferred for the use Government School for the Blind at Cuddalore. In the memo third read above, the Government in Social Welfare Department informed the Director of School Education that the above lands were not required for the Government School for Blind at Cuddalore and suggested the relinquishment of the entire extent of 6.77 acres of lands acquired for the above purpose. As the lands are not being put to use for which they have been acquired, the Chief Educational Officer, Cuddalore requested for the relinquishment of the

above lands. After relinquishment this land becomes a Government land belonging the Revenue Department.

(2) The Mother Superior, Saint Joseph's English School, Tirupapuliyur, has represented that there are about 1095 children studying in her school

from 1 to 6 standards and that there are no space to expand the school. She has therefore requested to place the lands referred to in para 1 above

at her disposal and she has expressed her willingness to pay the cost of the lands and to pay the enhanced compensation if any awarded by the

Sub-Court or High Court. The Director of School Education has reported that the lands in question are no longer required for Education

Department and as recommended by the Collect or, South Arcot, District the above lands may be placed at the disposal of the Saint Joseph's

English School, Tirupapuliyur on collection of the land value. The Collector of South Arcot has suggested for alienation of the entire lands made

under B.S.O. 24 to the S. Joseph's English School, Tirupapuliyur on collection of value as fixed by the land Acquisition Officer and subsequently

enhanced by the Courts.

(3) The Government has examined the question of disposing lands measuring 6.77 acres of lands in S. No. 16/1 to 16/4 of Koothapakkam village,

Cuddalore taluk South Arcot District. It has been observed that the land acquired in 1970 is Inam Dry land therefore B.S.O. 90-2-(iv) will

operate in this case. The Government direct that the provisions of B.S.O. 90-32-(iv) berelaxed and the entire extent of 6.77 acres in S. No. 16/1,

to 16/4, in Koothapakkam Village, Cuddalore taluk, South Arcot District be alienated under B.S.O 24 and be placed at the disposal of the

authorities of S. Joseph's English School on collection of land value with interest, including the enhanced compensation awarded by the Court. The

Management shall be liable to pay the further enhanced compensation if any ordered By the High Court, Madras.

(4) The District Revenue Officer, South Arcot District is requested to said regular proposals under B.S.O. 24 for placing the lands at the disposal

of the St. Joseph's English School, Tirupapuliyur to the competent authority with reference, to the orders in G.O. Ms. No. 874 Revenue, dated

18th April 1977.

(5) The District Rvenue Officer, South Arcot is requested to credit the amount of

Rs. 26,459, (Rupees twenty-six thousand four hundred and fifty nine only) already paid by the Education Department forwards the land acquisition charge together with interest there on to a newly opened sub-head "AB Deduct-Receipts and recoveries of Capital Account-Amount realised by the sale of lands to be opened under 477-A. Capital outlay on Education Act and Culture-A8. Secondary Education non-plan.

Challenging this G.O. Writ Petitions No. 1648 of 1979 was filed to quash the said G.O. This writ petition was dismissed by me, observing the following:

No doubt the property originally belonged to the Devasthanam which was acquired under the power of eminent domain through the provisions of the Land Acquisition Act. After such an acquisition, the title became vested with the Government, Thereafter, they were free to do anything with the Land. Only in the event of their proposing to dispose of the land otherwise, the right of the Devasthanam, if at all, could ever arise. I have not been shown any provisions in the B.S.O. which requires the State of Tamil Nadu to re-assign, the land in favour of the original owner. What is sought to be relied on is the provisions in B.S.O. 90-32(3) which reads as follows: In case where the circumstances described in 2(a) and 2(b) do not exist, or where the adjacent owner does not, after due notice, accept the owner, the land should be offered at cost price to the parties to whom the proprietary right and the right of occupancy, if any in the land originally belonged, or to their heirs.

The case on hand does not fall under this provision. The Government still retained the land and they dispensed with the procedural formality contemplated in B.S.O. 90-12-(iv) which they are certainly entitled to do. So long as there is no right vested with the temple to ask for re-assignment, it can have no valid complaint. The fact that originally the property belonged to the temple does not give it, the right to pre-emption to say. If this to be position in law, I am totally unable to understand why the temple should be heard before the Government relaxed this case from the operation of B.S.O. 90-32 (iv) Certainly it does not lie in the mouth of the Petitioners to contend so.

Thereupon, Writ Appeal No. 328 of 1979 was filed before the Division Bench of this Court. When an interim injunction was sought, the appellate

Bench observed as follows:

If the writ appeal filed by the Appellant Devasthanam is ultimately allowed by this Court, the writ Petitioner-school agrees and undertakes to

remove the structure proposed to be put up in the lands comprised in R.S. No. 16/1 of Koohapakkam and handover the vacant possession of the

lands as per order of this Court.

3. Besides this writ appeal one Parvathi Ammal and Annasami filed Original Suit No. 925 of 1979 on the file of the District Munsif's Court.

Cuddalore for permanent injunction restraining the writ Petitioner-school from putting up any construction and also interfering with their alleged

possession. Along with the suit Interlocutory Application No. 1482 of 1979 was filed and the Court orders ad-interim injunction. Thereafter, it

was vacated on 23rd May, 1979. Similarly, the Executive Officer of Sri. Devanabasami Devasthanam filed Original Suit No. 924 of 1979 on the

file of the Court of the District Munsif, Cuddalore. He also preferred an interlocutory application in Interlocutory Application No. 1481 of 1979 for

the grant of temporary injunction (sic) the Petitioner-school from putting up any construction and from interfering with his possession. The Court

granted (sic) injunction. However, all these orders were vacated by the common order, dated 16th July, 1979 in view of the orders in Civil

Miscellaneous Petition No. 5067 of 1979 passed in Writ Appeal No. 328 of 1979 above referred to. As against the order in Interlocutory

Application Nos. 1481 and 1482 of 1979, Civil Miscellaneous Appeal Nos. 79 and 78 of 1979 were preferred to the learned Subordinate Judge

of Cuddalore. The appeals were ultimately dismissed. Thereupon, Civil Revision Petition Nos. 2082 and 2083 of 1980 were preferred to this

Court and they were dismissed in limine. Thereafter, the school put up construction on S. No. 16/2 and 16/1 respectively. By this time, the

Petitioner-school spent a sum of Rs. 3,00,000 for the construction of a big compound wall and other buildings over the entire extent of 5.77 acres.

While the matter was at this stage, the impugned G.O. viz., G.O. Ms. No. 450, Education Department, dated 12th March 1981 came to be

passed rescinding the earlier order made in G.O. No. 404, Education Department, dated 14th March, 1979 directing alienation of 5.77 acres of

land in favour of the Petitioner-school. It is this which is the subject-matter of

challenge in Writ Petition No. 1789 of 1981. There is another writ petition filed in Writ Petition No. 1617 of 1971 wherein the prayer is for mandamus to forbear the Respondents from disturbing the Petitioner-school from its enjoyment and possession.

4. Mr. B.R. Dolia, learned Counsel for the Petitioners, urges first and foremost that by reason of G.O. No. 404 Education, dated 14th March, 1979, the Petitioner-school has come to acquire certain vested right. Besides that, it had also acted on the representation made to it by the

Government of Tamil Nadu and thereby put up constructions. In such a case, clearly the principle of promissory estoppel will squarely apply as

laid down in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., It cannot be contended that certain rights are yet to accrue in favour

of the school since no formal order had been passed to complete the assignment in favour of the school. Nothing further was required because the

Petitioner was called upon to pay the amount at the market value which in fact the Petitioner-school had deposited. It had also deposited the

enhanced compensation. Therefore, for every practical purposes, the assignment as complete. That assignment cannot be interfered with at the

instance of the (sic) white owners. Once the property having come to vest in the Government, by reason of Section 16 of the Land Acquisition Act

free from all encumbrances, thereafter, there is no question of (sic) while owner. Under these circumstances, it is incorrect to say that the earlier

order made in G.O. Ms. No. 404, dated 14th March, 1979 was passed without reference to the Board's Standing Orders. In fact, that was

considered and the Government directed the revenue authority to place a proposal with regard to the exemption from the Board's Standing

Orders, especially B.S.O. No 90-32-iv. Therefore, where there has been a proper and valid consideration for which the assignment was directed,

finding that the purpose for acquisition originally was for putting up a school and equally finding that there is another school willing to take the land

at the market value, for the Government to go back upon the same will be his by the principle of promissory estoppel. There is also one more

ground on which the Petitioner is easily entitled to succeed, viz., that the impugned G.O. had come to be passed without notice to the Petitioner.

When rights had come to accrue in G.O. Ms. No. 404, dated 14th March, 1979 it

is not open to the Government to treat as though that G.O. is no-nest and then proceed to deal with the matter unmindful of G.O. Ms. No. 40, dated 14th March, 1979 and pass orders without notice to the Petitioner. Therefore, on the simple ground of violation of the principles of natural justice, the impugned order is liable to be set aside. With regard to an assignment, a Division Bench of this Court in M.G. Chakravarthi Naicker and Another Vs. K.M. Thillaimoorthy and Others, held that even if D Form patta had not been issued, if the assignment is cancelled without notice to the original assignee that will be offensive of the principles of natural justice.

5. The learned Advocate-General appearing for the temple, viz., the third Respondent submits that very valid reasons had been given for the cancellation of G.O. Ms. No. 404, dated 14th, March, 1979. Once it was found that the lands were not to be used for the original purpose of acquisition, the execution officer of the temple as early as in 1974 requested the cancellation of the award proceedings and restoration of land to the temple. While passing G.O. Ms. No. 404, dated 14th March, 1979 the Government did not take into account the interest of the temple. It is one thing to say the Government did take into consideration the interest of the temple and thereafter over ruled the request of the temple, and it is totally different thing to completely lost sight of the request of the temple and make an assignment, which is totally a different thing. In the former event of course this Respondent could have no right to claim. But where the consideration of the claim of the temple was completely forgotten, certainly the Government is entitled to have a second look. It is not merely having a second look, but something more. There was no need to request the Government to relax the provisions of B.S.O. 90-32-iv. It was a mistake committed by the Collector who was oblivious to the request of the temple. That apart, if public auction had been restored to as contemplated under the B.S.O. it was well open to the third Respondent to have come forward and project a claim in its favour. That very valuable opportunity was deprived to the third Respondent. Then again, when the land was very much needed for the temple, to acquire and then diversify the Purpose of acquisition is something totally unwarranted. If the property had been sold in public auction, it would have fetched a higher price than the

price at which the Petitioner-school was assigned. It is not open to the Petitioner-school to say that the doctrine of promissory estoppel would apply to this case. There was nothing promised under G.O. Ms. No. 404, dated 14th March, 1979, The right of the school was yet to crystallise. It was only on the undertaking given by the school, it was allowed to put up construction. Where therefore, in view of that undertaking constructions are put up, it is not open to the school to say that they acted to its detriment. Therefore, looked at from any point of view, the principle of promissory estoppel will not apply at all. Though it is true that the impugned order in G.O. Ms. No. 450, dated 12th March, 1981 had come to be passed without notice to the Petitioner, there is no requirement to give notice at all because no right had come to vest in favour of the school under the earlier G.O. Where the Government found that there were procedural lapses while passing the earlier G.O. and yet if it corrects the lapses, it cannot be said to be wrong. Nor again on that score to correct those administrative lapses, the Petitioner should be informed of the same. The learned Government Pleader, Mr. M. Shakir Ali, and Mr. R.S. Venkatachari adopted the arguments of the learned Advocate-General.

6. Having regard to the above arguments, the following questions emerge for consideration: (1) What is the scope of G.O. Ms. No. 404, dated 14th March, 1979, (2) Does the doctrine of promissory estoppel apply (3) Are the Government right in passing G.O. Ms. No. 450 dated 12th March, 1981, (4) Does the impugned G.O. violate the principles of natural justice.

7. I have already extracted G.O. Ms. No. 404, dated 14th March, 1979. From a careful reading of that G.O. the following things emerge. Though the acquisition of the land was originally for the purpose of Government Basic Training School for Women at Tirupapuliyur because of the shifting of the school that purpose was rendered otiose. Then again, when suggestion was made by the local authorities for getting the lands for the purpose of the Government Blind School, the Government negatived the proposal and ordered the Director of Education to relinquish, and ultimately the relinquishment took place on 8th January, 1977. It was, this stage, the school made an application on 7th May, 1978 that these lands may be placed at the disposal of the school for construction of building so as to shift certain classes from the present place and to open next higher

standards. One thing that require to be noted very carefully is, school had expressed its willingness to pay the cost of the lands and also to pay the

enhanced compensation, if any awarded by the Sub-Court or the High Court. The Director of School Education had stated that the land be placed

at the disposal of the school on collection of the land value and suggested the alienation of the entire lands under B.S.O. 24. On this background

(1) the Government directed the provisions of B.S.O. 90-32-iv be relaxed and the entire extent of 5.77 acres of land is S. Nos. 16/1 to 16/4 in

Koothapakkam village in Cuddalore taluk be alienated under Board's Standing Order 24. (2) They shall be placed at the disposal of the

authorities of the Petitioner school. (3) On collection of land value with interest including the enhanced compensation awarded by the Court (4)

The management was liable to pay further enhanced compensation if any ordered by the High Court.

8. Farther, a direction was issued to the District Revenue Officer, South Arcot to send regular proposal under B.S.O. 24 for placing the lands at

the disposal of the Petitioner school to the competent authority with reference to G.O. Ms. No. 874, Revenue dated 18th April, 1977. Therefore,

to my mind it appears that all the formalities had been complied with concerning assignment. As a matter of fact, the Petitioner-school had

deposited a sum of Rs. 52,781.84. The break up is as follows; On 19th March, 1979 a sum of Rs. 35,984.29 was paid and a further sum of Rs.

16803-70 was paid towards enhanced compensation. This facts no controverted before me. Therefore, the rights in relation to assignment have

come to vest in the Petitioner school. I am totally unable to agree with the learned Advocate-General that possession is yet to be taken and in the

absence of formal handing over of possession, the Petitioner school cannot claim any right. This argument overlooks the important fact that the

records clearly bear out possession having been taken over by the Government. Otherwise, there was no question of calling upon the Director of

School Education to relinquish the land. The file clearly bears out that the relinquishment of the land took place on 8th January, 1977 in the Chief

Educational Officer, Cuddalore Memorandum R. Dis. 3815/72/A-3. That puts the matter beyond doubt that possession had been over.

Whatever the school had to do concerning the performance of its part under the terms of the G.O. (Sic) did because, as I said above the value of

the property as on the date of acquisition, was paid over by the school. In fact, when the matter came up earlier before me in Writ Petition No.

1643 of 1979 at instance of certain worshippers of the third Respondent temple I had occasion deal with the scope of the G.O. though of course

in a different context. In that as regards the question whether the Petitioners therein would be entitled to notice before the impugned G.O. viz.

G.O., Ms. No. 404, dated 14th March, 1979 was passed, I observed as follows:

No doubt the property originally belonged to the Devasthanam which was acquired under the power of eminent domain through the provisions of

the Land Acquisition Act. After such an acquisition, the title becomes vested with the Government. Thereafter, they are free to do anything with the

land. Only in the event of they proposing to dispose of the land otherwise, the right of the Devasthanam, if at all could ever arise. I have not been

shown any provision in the B.S.O. which requires the State of Tamil Nadu to reassign the land in favour of the original owner. What is sought to be

relied on is the provision in B.S.O. 90-32-iv which reads as follows:

In cases where the circumstances described in 2(a) and 2(b) do not exist, or where the adjacent owner does not after the notice, accept the offer,

the land should be offered at cost price to the parties to whom the proprietary right and the right of occupancy, if any, in the land originally

belonged or to their heirs.

9. The case on hand does not fall under this provision. The Government still retained the land and they dispensed with Procedural formality

contemplated in B.S.O. 90-32-iv which they are certainly entitled to do. So long as there is no right vested with the temple to ask for re-

assignment, it can have no valid complaint. The fact that the originally the property belonged to the temple does not give it, the right to presumption

to say. If this be the position in law, I am totally unable to understand why the temple should be heard before the Government relates the case from

the operation of B.S.O. 90-32-iv. Certainly it does not lie in the mouth of the Petitioners to contend so. Therefore, once the property had come to

vest in the Government, they are free to deal with the property as they like, because the power of eminent domain displaced the title of the owners

in favour of the Government. It is exactly in that situation the Government finding that the lands were no longer useful for the purpose for which it

was acquired, or even for a revised purpose of locating a Government Blind School, alienated the lands in favour of the Petitioner-school. This is in

my view, is the scope of the G.O. Ms. No. 404, dated 14th March, 1979.

Point No. 2: The doctrine of promissory estoppels is a very valuable doctrine and the recent trend of the Courts is to apply the doctrine with all its

rigors as against persons who make promises. It is not necessary for met deal with the various authorities. It will suffice if I refer to the decision of

the Supreme Court in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., The Supreme Court in Motilal Padampat Sugar Mills Co.

Ltd. Vs. State of Uttar Pradesh and Others, extracted the portion of that judgment in that case in paragraph 8 which is as follows:

The true principle of promissory estoppels, therefore seems to be that where one party has by his words of conduct made to the other a clear and

unequivocal promise which in intended to create legal relation or effect a legal relationship to arise in the future knowing or intending that it would

be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on

the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings

which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or

not.

10. Here, the question is whether the Petitioner had acted to its detriment acting upon the G.O. Ms. No. 404, dated 14th March, 1979. In para 8

of the affidavit it is said:

The Petitioner-school would have spent about Rs. 1,20,000 for construction of compund wall and further construction of building would have

costed a sum of Rs. 1,80,000. Completion of construction is yet to be made. Further for starting higher standard from Standard VI to X the

concerned educational authority i.e. Director of School Education had already accorded permission to open a new matriculation school with

classes upto Standard IX and he had directed the Petitioner to pay a deposit of Rs. 1,00,000 by way of cash endowment. The first instalment of

the same being Rs. 30,000 has been deposited and the said authority has also directed the Petitioner to deposit the balance of Rs. 70,000 in two

instalments. The Petitioner-school had in compliance with the same had already deposited Rs. 30,000 and is ready and willing to deposit the

balance within the time specified by the authorities.

11. This coupled with the fact of paying the amount which was demanded by the Government, would, in my considered opinion, amount to acting

upon the G.O. to the detriment of the Petitioner. No doubt, an under taking was given by the Petitioner to this Court that in the event of the writ

Appellant succeeding the super-structures will be demolished and the property will be restored to its original position. However, inasmuch as the

writ appeal was dismissed as in fractious, consequent on the G.O. which is now impugned before me, I do not think those, orders can ever be put

against the Petitioner. Otherwise, it would make the school not being enabled to enjoy the possession of the lands which was duly assigned in its

favour. Then again, in paragraph 3 of the reply, the Petitioner-school stated thus:

The Petitioner is a registered society registered under the Societies Registration Act. At present the strength of the school is about 1183 and is

running classes from L.K.G. to XII Standard, the Petitioner is charging Rs. 15 p.m. as tuition fee for L.K.G. and U.K.G. Rs. 20 p.m. for I and I

Standards and Rs. 25 p.m. for III to Xth Standards. The terms fee for Higher Secondary Classes is Rs. 205 (three terms). The Petitioner is also

running a boarding house accommodating 225 students out of which 58 are non-paying students. By the proceedings, dated 18th August, 1983

the Director of School Education, Madras has granted temporary recognition for standards 1 to 10 upto 31st May 1984 and the Petitioner had

paid Rs. 70,000 towards endowment as directed by the Director of School Education in his reference R.C. No. 281/65/ E3/79, dated 15th

October, 1980. The Petitioner has been granted temporary recognition to run the school with standards KI and XII upto 31st May, 1984 for

which the Petitioner has paid Rs. 15,000 towards endowment as directed by the Director of School Education in his D. Dis. No. 5871/5E1/82,

dated 15th March, 1983.

12. These are not controverted in the counter-affidavit. However, the learned Advocate-General would say that where the Petitioner knowing full

well of the undertaking puts up certain construction, it cannot take advantage of the same and seek the benefit of the doctrine of promissory

estoppel. Even conceding that for a moment, in so far as the Government had taken the value of the lands, not only the original value but also the

value as enhanced by the Sub-Court, certainly the Petitioner must be held to have been put to detriment. In fact, the counter-affidavit of the

Collector states in paragraph 21(e) thus:

It is true that the lands were handed-over possession to the Petitioner on collection of the cost of acquisition i.e. Rs. 52,787.84.

Therefore, I am of the view that the G.O. Ms. No. 404 did not remain dormant, it had been acted upon and that too to the detriment of the

Petitioner. This is my finding on point No. 2.

Point No. 3: The sheet-anchor of the learned Advocate-General's argument is that the earlier G.O. Ms. No. 404, dated 14th March, 1979 was

passed oblivious of the request made by the temple, as early as in 1974 to cancel the award proceedings and reassign the lands in favour of the

temple. Therefore the first question which I have go to determine is whether this statement is correct. In order to so determine, let me trace the

facts from the file itself. The then Collector of South Arcot in D.O. letter No. L5. 100608.80, dated, 19th August, 1980 addressed to the

Secretary to the Chief Minister of Tamil Nadu states paragraph 3 as follows:

Since the lands had not been put to use for the purpose for which they were acquired, it was ordered in District Revenue Officer's K. Dis.

12239/74, dated 2nd July, 1974 for the resumption of the lands. In the meanwhile Thiru K.G. Govindarajulu Naidu former Executive Officer of Sri

Devana hasami Davasthanam of Thiruvendhipuram applied to the Government on 13th September, 1979 requesting to cancel the award

proceedings and to reassign the land to the temple on the ground that the lands acquired were not put to use for the purpose for which they were

acquired. On his request the Government in their Memo No. 6381/B3/74-1, Education Department, dated 26th August, 1974 called for the

remarks of the District Revenue Officer, Cuddalore. After getting a report from the Chief Educational Officer, Cuddalore stating that the acquired

sides are required for the construction of a school building for Blind and that the matter is under consideration of the Director of School Education,

the District Revenue Officer in his Ref. LI. 142946/74, dated 25th May, 1976 sent a report to the Government. But the Government in their

Memo No. 48572/P-II/19, dated 24th November, 1976 had negated the proposals of the Director of School Education stating that the lands acquired are not required for the Government School for Blind at Cuddalore, and directed the Directors of School Education to relinquish the lands. The Chief Educational Officer, Cuddalore had ultimately relinquished the lands acquired in her R. Dis. 3815/72-A3, dated 8th January, 1977.

13. If really the lands were ultimately relinquished only on 8th January, 1977, which fact I have already noted as well, till this date there was no firm decision by the Government of Tamil Nadu that the lands acquired were not any longer required. It is only then the right of the temple arises. It cannot even before such a firm decision was arrived at, take advantage of a petition, dated 13th September, 1974 and then say the Government were, requested to re-assign the lands. The prayer of the temple was to cancel the award and to reassign. That is totally different from making a request for re-assignment after the Government had come to a firm decision that the lands are no longer required for the purpose of acquisition and admittedly therefore on the date when the Petitioner-school made an application there was no application of the temple which had been either buried or lost sight of by the Collector. Here is a Collector who is on fretted with this situation. The lands had been relinquished on 8th January, 1977 the original purpose of acquisition was for a school, the Petitioner-school applied for assignment on 7th May, 1978, the lands had come to vest already with the Government, therefore, the Collector requires the relaxation of the provision is B.S.O. 98-32-iv. What the B.S.O. 90-32-iv says is this:

If the land is not declared unfit for permanent occupation Under Clause (i) or (ii) above and was agricultural or past oral land at the time of the acquisition, it should be disposed of accordance with the following instruction which should not be deviated from without the previous sanction of

State Government:

Such lands should be notified for sale in public auction by giving wide publicity in respect of the sales in the villages by beat of tom-tom and by affixing notice of sales in conspicuous places in the villages concerned. The date of sale should be fixed allowing an interval of thirty days between

the date of publicity and the date of sale. The lands should be sold by public auction subject to the annual assessment. There shall be no upset

price except in the case of railway relinquished lands where a minimum of upset price should be fixed in consultation with Railway Administration

before auction. If at the time of sale, anybody puts forth his claim in respect of any field either as an adjacent owner, or as an original owner or as

heir of the original owner, the sale of that field should be stopped and his claim investigated and disposed of in the manner specified in Sub-clauses

(2) and (3). If it is found that his claim is not proved the field should be sold by public auction.

(2) (a) Where the land is useless to anyone but the adjacent owner, or

(2) (b) Where its possession by any person other than the adjacent owner would interfere with the full enjoyment of the adjoining property by its

owner, it should first be offered to the adjacent owner at full market value.

14. The learned Advocate General lays much stress upon this B.S.O. I am unable to agree with him, when he says that the right of the previous

owner is paramount. This is a direction given to the revenue authorities to follow in the event of the land is not declared unfit for permanent

occupation under Clause (i) or (ii) above and was agricultural or pastoral at the time of acquisition. But it is important to bear in mind that this

procedure can be deviated with the previous sanction of the State Government. Therefore, it was this sanction which was sought by the Collector

and it was that sanction in no uncertain terms granted by the Government under G.O. Ms. No. 404, dated 14th March, 1979. At the risk of

repetition I may again refer to G.O. Ms. No. 404, dated 14th March, 1979 which states. The Government direct that the provisions of B.S.O. 90-

32-iv be relaxed. This I take it is the sanction which is required under law which sanction was partly granted. Under B.S.O. 24 State land could be

placed at the disposal of an institution and exemption granted from land revenue. It was this proposed which required to be completed under G.O.

Ms. No. 404. The present order of the Government by itself does not give any reason whatever ex facie. It merely says:

The Government after consideration issued order in the Government Order third read above (G.O. Ms. No. 404, dated 14th March, 1979) for

placing the lands at the disposal of the St. Joseph's English School,

Thirupapuliyur on collection of land value and enhanced compensation fixed by the Court. The Executive Officer Arulmigu Devanathaswami Thirukkoil, Thiruvendhipuram, the members of the Tiruppani Committee, Arulmigu Devanathasami Thirukkoil, Thirevandhipuram, the Secretary, Hindu Temples protection Committee, Cuddalore Thiru K. Annaswami Pillai, Cuddalore (from whom also lands were acquired) and one Thiru S.R. Srinivasen Cuddalore have requested the Government to cancel the orders issued in the Government Order third read above and replicate the lands to the erstwhile owners.

I was somewhat surprised the way in which the Government purported to cancel the earlier order. This can hardly be styled as a ground for cancelation. Therefore, I called upon the learned Government Pleader to produce the necessary file. Accordingly the note file also had come to be produced. That note which has been approved by two Ministers gives the following reasons, each one of which I will deal in seriatim:

(1) Inspire of the temple, the third Respondent herein requesting that the lands be re-assigned in favour of the temple that was not considered by the erstwhile Collector and the report of the Collector therefore is wrong. When the Collector sent proposals he never brought the request of the temple to the notice of the Government.

This reason cannot be supported at all, because, as I said above, the temple made a request at a time when still the land (sic) proceedings had not been completed. The award was yet to be passed and the request was for cancellation of the award and to reassign. The first decision came to be taken only far later and it was only on 8th January, 1977 the lands were relinquished. It is only thereafter the question of reassignment would ever arise. (2) The second reason is:

the Petitioner-school can afford to purchase the property at the market value. Besides, the Petitioner-school does not have greater rights than the temple or the land owners from whom acquisition was made.

This is hardly a ground that can be supported in law. As I said above, once the property had come to vest in the Government and if they decide that the lands are not required for the purpose for which it was acquired, there is no question of the previous owners getting any preferential right whatsoever. In fact, I did not hear the learned Advocate-General even, though

such a proposition. All that is said was in the event of the Government relaxing the operation of B.S.O. 90-32-iv., the third Respondent could have projected its claims. That is far from saying that the temple and others had some right and the school does not have a preferential right. In fact, it is not the contention of Mr. B.R. Dolia that the school has any preferential right whatever. It made a request to the Government to assign and that was assigned because as on that date there was no valid application in the eye of law except that of the Petitioner-school. Here again it has to be noted that only when the land is not declared unfit for permanent occupation under Clauses (i) and (ii) of B.S.O. 90-32-iv, that provision will come into play. There was no such declaration at all in this case because of the relaxation. Even otherwise, there is no peremptory right as far as the previous owner is concerned. He gets the right only after the adjacent owner's right is exhausted. He could only take his claim after the adjacent owner and stop the sale. Therefore, this reason cannot be supported. (3) The third of the reasons given is that under B.S.O. 24 the (sic) made in favour of the Petitioner-school is incorrect. I do not know what is incorrect about it because the lands were not required for the purpose for which it was acquired. The lands had come to vest in the Government by exercise of the power of dominant demands. Therefore, it had become the State land and such a land if it is placed at disposal of the writ Petitioner institution which (sic) with in the (sic) of P.S.O. 24, I am unable to see what exactly is wrong in that. Therefore this reason also has to be rejected. (4) The fourth (sic) is at the (sic) 1979 the prices of the land had (sic), to alienate the land at the value of the year 1970 was not correct. Here, this revision (sic) school was willing not only to pay the market price as on the date of acquisition but also even any enhanced compensation awarded, by the Court. I am informed that the High Court in Appeal Suit No. 531 of 1975 awarded a higher compensation of Rs. 3,400 per acre then what was fixed by the Sub-Court. Even that the Petitioner-school had expressed its will (sic) to pay and there was no other (sic) but to pay the same. Certainly, the Government was not try (sic) to make a bargain at the time of alienation of these lands. It was (sic) justified because earlier in G.O. Ms. No. 874, Revenue, dated 18th April, 1977, a decision was taken to place the land at the disposal of the institution in

accordance with B.S.O. 24. Therefore, the Government required the Petitioner-school to pay at the market value of 1979 was not at all in

contemplates. (sic) Government have contemplated to deal with in a commercial way of the land which acquired under the power of (sic).

Therefore, his reason also falls to the ground. Thus I have necessarily to concluded that one on the feasons that is put forth through not in G.O. No.

450 but contained in the note file, can have any relevance whatsoever. Therefore, I am totally unable to accept the argument of the learned

Advocate-General that it is only an administrative lapse that was committed while passing the earlier G.O. Ms. No. 404, which is sought to be

rectified. It appears that the Government have made up its mind to cencel the G.O. Ms. No. 404 and it buttressed the same with the reason. In this

connection, a ruling that is relied on by the learned Advocate-General that where the authority seeks to correct an earlier administrative lapse, the

principle of the doctrine of promissory estoppel would not apply, may be seen. The citation is M/s. Jit Ram Shiv Kumar v. State of Haryana AIR

1983 S.C. 1285 wherein it was Stated that the principles of promissory entoppel cannot be invoked for preventing the Government from

discharging its function under law. I do not think this proposition would ever apply at all. I am not preventing the Government from discharging its

function under law. On the contrary, a valid proper and considered decision which was taken earlier is now interfered with by buttressing it with

some reason or other and all those reasons having fallen to ground-I see no legal warrant to pass the impugned G.O.

15. Undoubtedly this is a case in which as I said above the right of the Petitioner-school had come to crystallise in G.O. Ms. No. 404 dated, 14th

March, 1979. It is but axiomatic that if the rights of the school are sought to be interfered with it must be put on notice. Otherwise it amounts to

clear violation of natural justice. In a case which arose before a Division Bench of this Court in M.G. Chakravarthi Naicker and Another Vs. K.M.

Thillaimoorthy and Others, 483 it was held that even though D form patta had not been issued to complete the assignment such an order of

assignment could not be cancelled without notice and that would constitute violation of the principles of natural justice. That principles squarely

applies to the facts of this case. And I should think the Petitioner is on a stronger footing because this is not an inchoate or incomplete right. On the

contrary it is a completed right vesting certain property in favour of the Petitioner school. It was observed in M.G. Chakravarthi Naicker and

Another Vs. K.M. Thillaimoorthy and Others, as follows:

The Government has made an order of assignment in favour of Manicka Naicker the father of the first Respondent Thillaimoorthy and directed the

Collection of Chingleput to give effect to the order by evicting Chakravarthi Naicker from the land. By virtue of the said order Manicka Naicker

has acquired some rights in the land and the principles of natural justice require that his rights should not be affected adversely without his being

heard and except on legal grounds such as those contemplated in Board's standing Order 15 paragraph 18. In the subsequent order of the

Government in favour of Chakravarthi Naicker, there is absolutely no discussion as to the merits of his claim to get the assignment of the land in his

favour in spite of the prior order in favour of Manicka Naicker. It is no doubt open to the Government to interfere with their earlier in favour of

Manicka Naicker if Chakravarthi Naicker is able to bring his case with the provisions of Boards, Standing order 15 paragraph 18 which embody

only principles of natural justice usually applied in quasi-Judicial proceedings.

16. Therefore even on the solitary ground of the violation of the principles of natural Justice alone, the writ Petitioner is entitled to succeed.

17. For all these reasons I hereby make the rule nisi absolute. The writ petitions are allowed there will be no order as to costs in the writ petitions.