

W.P.Nos.9285 & 10135 of 2020 & WP.1708 of 2021

and

WMP.Nos.11319, 12319 of 2020

and WMP.No.1917 of 2021

N.SESHASAYEE.J.,

The petitioners herein are Deepak and Deepa, who have preferred separate writ petitions challenging the notification for acquisition of the residence of the former Chief Minister of the State, Late.Ms.J.Jayalalitha into a memorial, or the award passed by the Land Acquisition Officer. Even as these petitions are pending hearing, the Government has notified its intent to declare open the aforesaid residence of the former Chief Minister as a memorial in a function which is scheduled to take place on **28.01.2021**.

2. Keeping aside the consideration of the main controversy involving the legality of the acquisition, this Court now takes up the issue as to whether the respondents should be permitted to declare open the residence of the former Chief Minister as the memorial as scheduled.

3. The facts of the case may be described under two heads: (A) Title and (B)

Land Acquisition Proceedings.

A. Title:

(a) The building in question is known by the name “Veda Nilayam” that bears Old Door No.36 and New Door No.79 at Poes Garden, Chennai.

It is an undisputed, and perhaps an indisputable fact that this property was owned by Ms.J.Jayalalitha. While so, on 05.12.2016, Ms.Jayalalitha passed away. She died intestate.

(b) The petitioners herein are the nephew and niece of the former Chief Minister, they being the children of the brother of Ms.J.Jayalalitha.

(c) Now ensued couple of litigations to decide who the heirs of Ms.J.Jayalalitha are. A certain Pugalenthil and another filed O.P.Diary No:35654/2017. They admittedly were strangers to the family of Ms.J.Jayalalitha. This was not taken on file by this court, and was posted before a learned Single Judge of this Court for maintainability. The learned Single Judge did not entertain the petition. Challenging the same, Pugalenthil and his co-petitioner preferred OSA 445/2018.

(d) In the mean time, Deepak, the nephew of late Ms. J.Jayalalitha had

filed O.P.630/2018 for issuing letters of administration, and this was filed against his sister Deepa.

(e) Both OSA 445/2018 (filed by Pugalenth) and O.P.630/2018 (filed by Deepak) came to be disposed of by a Division Bench of this Court. By a separate Order, the Division Bench has declared both Deepak and Deepa as the Class II heirs of Ms. Jayalalitha. As to be anticipated it dismissed OSA 445/2018.

This would now mean that inasmuch as both Deepak and Deepa are the heirs of late Ms.J.Jayalalitha, the title to all her assets – both movable and the immovable properties, vested in Deepak and Deepa.

B. The Land Acquisition Proceedings:

4.1 Even prior to Deepak approaching this Court with his OP 630/2018, Deepa appeared to have made a representation dated 22-08-2017 to the Chief Secretary and couple of other Secretaries to the Government *inter alia* requiring them to refrain from visiting, altering or putting up any structures both temporary and permanent at Veda Nilayam. As she heard

nothing on it, she moved this court with W.P.26286/2017 and this Court Vide its Order dated 23-10-2017, directed the respondents to that case to consider her representation.

4.2 In the mean time, the Government came up with G.O.(Ms) No.180 (Tamil Nadu Development and Information (Memorials) Department), dated 05.10.2017, granting administrative sanction for acquiring 'Veda Nilayam' to constitute it as a memorial for the late Chief Minister. There has been resistance from the petitioners to the said move and the details were of not very pertinent for the current purpose.

4.3 Pursuant to this acquisition proceedings commenced. As per the scheme of the RFCTLARR Act, 2013, there are few stages involved in the process of acquisition: First is the preliminary stage where a Social Impact Assessment under Sec.4 is mandatory. This will be followed by a preliminary notification under Sec.11, followed by Sec.12 under which the land-acquisition authority would enter upon the land notified under Sec.11, but only upon issuing notice to the owners of the property. This will be by

a final declaration under Sec.19. Now there will remain just one stage for completing the acquisition proceedings, and this is the passing of the award and payment of compensation. This contemplates issuance of notices under Sec.21 of the Act to the owners of the property.

5. The material particulars of 'Veda Nilayam' acquisition may be detailed :

(a) The Social Impact Assessment Reports have been made, the initial report was brought out on 5.12.2018 and the final report on 21.9.2019. Between the two dates, on 29.12.2018, to be more specific, Deepak has addressed the communication *inter alia* to the Chief Secretary informing them that they are the Class-II Legal Heirs of Ms.J.Jayalalitha.

(b) It is in this background, a preliminary notification under Sec 11 was issued on 28.6.2019 in Form IV. In the column intended for notifying the name of the parties interested in the property proposed to be acquired, it is indicated that the heirs of late Ms.J.Jayalalitha is required to be ascertained. Deepak would respond to this with his

representation dated 06.07.2019 addressed to the Land Acquisition Officer and the District Collector, and again he informed them that he and Deepa are the Class-II heirs of the former Chief Minister, and also informed them about the pendency of OP.630 of 2018 that he has filed.

(c) In terms of the RFCTLARR Act, the next stage is to enter upon the property by the Land Acquisition Officer for surveying under Sec.12 and here necessary notices have to be served on the parties interested. It is not adequately known whether any notices were issued to Deepa or Deepak.

(d) Subsequently, another proceeding was issued under Form VI dated 04.5.2020, presumably under Section 16 of the Act that there may not be any need for resettlement of any affected families. This was followed by a declaration under Section 19(1) in Form VI on 06.5.2020. Even here, it is indicated that the names of the persons interested in the property declared to be acquired are yet to be ascertained.

(e) It was at this stage, on 27-05-2018, both Deepa and Deepak are

declared as Class-II legal heirs of late Ms.J.Jayalalitha in O.P.No.630/2018. Thereafter, notices were appeared to have been issued under Sec.21 for the purpose of passing the award. The enquiry was held 07.7.2020 in which both Deepak and Deepa, appeared to have participated, and raised their objections to the very acquisition. It also appears that Income Tax Department was heard in the matter since tax arrears were due payable by Ms. Jayalalitha. This was followed by few writ petitions the details are as below :

<i>W.P.No.</i>	<i>Petitioner</i>	<i>Prayer</i>
9229 of 2020	Poes Garden and Kasthuri Estate House Owners Association	Quashing the entire land acquisition proceedings. This was disposed of.
9285 of 2020	Deepak	Challenging the acquisition proceedings up to the stage of award
10135 of 2020	Deepa	Challenging the award
1708 of 2021	Deepak	Challenging the award

6. It may be noted that RFCTLARR Act deals only with acquisition of immovable property. But, late Ms.Jayalalitha died leaving behind several valuable movable properties, and for valuing them and for certain other

aspects of connected with the proposed memorial, an Ordinance was passed 22.5.2020. This was barely few days before the Division Bench of the Court declared Deepa and Deepak as Class-II heirs of Ms.J.Jayalalitha. In other words, this ordinance was passed when O.P. 630/2018 has been reserved for pronouncing Orders. Subsequently, on 17.10.2020, it became an Act of the Legislature as T.N.Act 32 of 2002. It *inter alia* provided for a Claims Commissioner for determining the value of the movable properties in the 'Veda Nilayam'.

7. As things stand thus, the Government has proposed to declare 'Veda Nilayam' as a memorial of Late Ms.J.Jayalalitha. Even though the case was originally posted to 02.2.2021, in view of the situation that emerged, these petitions came to be listed for hearing today.

8. Heard Mr.S.L.Sudarsanam for Deepak, Mr.K.V.Sundarajan for Deepa and Mr.Vijay Narayan, learned Advocate General assisted by Mr.V.Jayaprakash Narayanan, Government Pleader and Mr.E.Manoharan, learned Special Government Pleader for the respondents.

9.1 The counsel for the petitioners would state that from the very inception when G.O.(Ms)No.180 came to be published, the petitioners, Deepak in particular has been informing the authorities right from the Chief Secretary to the Land Acquisition Authority, that he and Deepa are the Class-II heirs of late Ms.J.Jayalalitha. Indeed Deepak himself has performed the last rites for late Ms.J.Jayalalitha. However, the Officials pretended that they were yet to know who her heirs are. In O.S.A.445/2018 which a certain Pugalenthirani and another has filed, the Government was also a party and it cannot plea ignorant that Deepak and Deepa have not staked their claim as the heirs of Ms.J.Jayalalitha. However, without waiting for the Court to decide who the heirs of the late Chief Minister are, the Government has rushed to go ahead with the acquisition proceedings as if there is no tomorrow.

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9.2 First, the Act does not permit the acquisition of a building to dedicate it as a memorial, for the same does not fall within the ambit of the definition of public purpose within the meaning of Sec.3 read with 2(1) of the Act. Secondly, the Government consciously maneuvered the proceedings to deny

the petitioner a right of hearing under the stage of Section 11 & Section 12 of the Act, when it knew that Deepak and Deepa are claiming themselves to be the heirs of late Ms. Jayalalitha. The Government could have invoked emergent provisions under Sec.40 of Act, but it opted not to do that.

9.4 This apart, so far as movable properties of late Ms.J.Jayalalitha are concerned, they are not even valued, and it is unfair and impermissible for the Government to declare open 'Veda Nilayam' as a memorial when the entire acquisition proceedings is not yet complete. Indeed, Deepak has been writing to the authorities with his communications dated 01.6.2020, 25.7.2020 for taking inventory of the various valuable movables belonging to the late Chief Minister Ms.J.Jayalalitha. But these pleas/requests appear to have fallen in deaf-ears.

9.5 Turning to possession, it was submitted that sometime in 2017, the Income Tax Department searched the Veda Nilayam premises, and handed over the keys to the police officials, who in turn appeared to have handed it over to the Collector. He argued that when the petitioners have *prima facie*

created a probability of success in their case, it is important the Government maintain status-quo.

10. Refuting the prayer to injunct the Government from declaring the Veda Nilayam, as a memorial for the late Chief Minister on 28.01.2021, the learned Advocate General has made his submissions, the quintessence of which are:

(a) At no time, the petitioners were in physical possession of the building, and if at all, any of the petitioners are entitled to just compensation for the property acquired. Therefore, even in the eventuality of this Court holding that a proper right of hearing has not been granted to the petitioners, it may not go to the extent of affecting the Notification under Sec.11, but, it has to commence from where it is required to commence.

(b) Secondly, vis-a-vis, the balance of convenience is concerned, there is no harm to the petitioners if the memorial is declared as scheduled on 28.01.2021, since their right is only about receiving the compensation. At any rate all arrangements have been made for the

function.

11.1 This Court carefully weighed the rival submissions. The anxiety of the Government to honour the former Chief Minister, and to make known to the world her achievements by converting her residence into a memorial apart, there is a challenge that might affect the title of the Government to the property in the eventuality of the petitioners succeeding in their challenge to the very acquisition. Deepak has already challenged it, and Deepa's petition for amending her prayer along the same lines is pending. This Court takes cognizance of the contention of Deepak that converting the residential house of late Ms. Jayalalitha will not fall within the definition of public purpose within the meaning of Sec. 2(1) of the Act, though considering its merit has to be deferred till another day.

11.2 Secondly, while there may be some merit in submissions of the learned Advocate General as to the powers of the Government to go for re-acquisition in the eventuality of this Court taking a view in favour of the petitioners, still to contend that the rights of the petitioners might have to

be limited to one of challenging the adequacy of the compensation awarded merely, appears to be an effort in over simplification. Right to property is valuable, and its expropriation should conform to strict compliance of the statute that enables it. It may have to be underscored here that the petitioners have been relentless in their pursuit to inform the officials at all levels that they are the Class II heirs of late Ms.J.Jayalalitha. Whether ignoring the same and proceeding with the acquisition process, which might have denied the petitioners personal notices under Sec.11 and 12, is appropriate, or how it impacts the acquisition proceedings itself, may have to be assessed only during the final hearing of these cases, but the facts as are now made available before the Court do establish that the petitioners have a strong *prima facie* case, and an arguable case in that.

11.3 This apart, so far as the movable properties of late Chief Minister are concerned, no inventory has been made yet. Today the Government cannot contend, nor plea ignorance that the heirs of late Ms.J.Jayalalitha could not be ascertained. An inventory of these articles therefore has to be taken only in the presence of the parties who are likely to be affected by

T.N.Act 32/2020. Necessarily, when the Claim Commissioner constituted under the Act, values these articles, he ought to grant the petitioners a right of hearing. Here, this Court finds no provision in the said Act enabling the Government to appropriate the movables belonging to late Chief Minister without awarding compensation to the parties to who they belong. However, this Court consciously refrain from making any further statement in the matter, since this Court was informed by Mr.S.L.Sudarsanam, the counsel for Deepak, that a separate writ petition challenging T.N.Act,32/2020 has been filed.

12. This case spotlights that the challenge involved here is not only confined to the correctness or the legality of the acquisition of the immovable property in 'Veda Nilayam', but to the incomplete process of acquisition of the movables also. It may not be appropriate for the Government to present the Court with a *fait accompli*, and to rush to declare open a memorial, when the owners thereof are clueless as to the actual value of the movables that they are entitled to in law.

13. In fitness of things, when these matters are pending, the Government should have refrained from opening the memorial. However, the learned Advocate General has informed the Court that arrangements for holding the function has been made, and any stay of the function might create considerable difficulties for the Government. Hence, this Court is constrained to pass the following Order:

- A) The ceremony of opening a memorial alone can take place as scheduled on 28.01.2021. The building shall not be thrown open to public without the leave of the Court;
- B) It is made clear that holding the function on 28-01-2021 will not in any way confer any right to the Government, nor deprive the petitioners of their right in the subject matter of the writ petitions.
- C) No flex banners or obstructive hoardings shall be placed; this apart the City Police Commissioner is directed to ensure that no undue inconvenience is caused to those live in the locality
- D) The main gate to the premises of 'Veda Nilayam' alone can be opened during the function. The building 'Veda Nilayam' shall not be opened at any time, even during the function, since taking the

inventory of the movables and their valuation is not yet complete. The right, title and the interest of the heirs of late Chief Minister cannot be marginalised.

- E) Once the function is over, the District Collector, or such official who has the custody of the keys of the entire premises of 'Veda Nilayam' shall hand over the keys to the Registrar General of this Court, since the valuable movables of late Ms.J.Jayalalitha to which the petitioners are now the heirs, have to be valued. Till the function is over, the custodian of the keys shall hold them in *custodia legis*, and is accountable to this Court.

The respondents are now required to complete the pleadings with their counter latest by 15.02.2021. Matter posted for final hearing on 24.02.2021 at 2.30 p.m.,

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