

## The George Town Building Owners Welfare Association Vs The Union of India, The Government of Tamil Nadu and The Chennai Metro Rail Ltd.

**Court:** Madras High Court

**Date of Decision:** Jan. 27, 2012

**Acts Referred:** Advocates Act, 1961 " Section 2(1), 9(1)  
Metro Railways (Construction of Works) Act, 1978 " Section 19, 19(1), 7, 7(1), 7(3)

**Hon'ble Judges:** Vinod K. Sharma, J

**Bench:** Single Bench

**Advocate:** S. Prakasam for Mr. V.B. Jothi Prakasam, for the Appellant; R. Meenakshi, Central Govt. Standing Counsel For Respondent No.1, Mr. R. Ravichandran, A.G.P. For Respondent No.2 and Mr. A. Thyagarajan for Mr. V.Ramajagadesan For Respondent No.3, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice Vinod K. Sharma

1. The George Town Building Owners Welfare Association has invoked the extraordinary equitable writ jurisdiction of this Court with the prayer

for issuance of a writ in the nature of prohibition forbearing the respondents from constructing underground Metro Railway line in the Segment from

Washermenpet to Mannadi via seven Well, George Town and Prakasam Road in Corridor I, as per their deviated alignment with consequential

relief of a writ in the nature of mandamus, to construct the underground Metro railway line from Washermenpet to Mannadi via Old Jail road and

Prakasam road, as per their original alignment, for corridor I. The petitioner Association is registered under the Tamil Nadu Societies Registration

Act, 1975 with an object of promoting their general welfare including the protection of their properties. The petitioner association have 85

members on its rolls.

2. The Union of India in the year 2006 announced a policy called National Urban transport policy requesting the State Government to undertake

Metro Rail projects in the metropolitan cities with the aim of according transport facilities to the growing population at affordable means and thus,

relieving the cities from the perennial problem of traffic congestion at peak hours.

3. As per the policy and with the cooperation of the Central Government, Tamil Nadu Government undertook to execute the project called the

Chennai Metro Rail Project. The State of Tamil Nadu incorporated a company called Chennai Metro Rail Limited which is registered under the

Companies Act.

4. The Chennai Metro Rail Ltd. at the first stage (Phase I), decided to lay down two railway lines, called Corridor I and Corridor II. The first

Corridor is to run from Washermenpet to Chennai Airport covering a distance of 23 Kilometers and the second from Central Railway Station to

St.Thomas Mount, for a distance of 22 Kilometers.

5. The George Town Area where the members of the petitioner association are residing is lying between Washermenpet and Mannadi in Corridor

I. It is pleaded that it is a congested residential area in city and therefore the Company had planned to lay down railway line underground from

Washermenpet to Mannadi and further upto Saidapet.

6. The petitioner do not dispute that the project is for public purpose. The submission of the petitioner is that the first respondent is required to

follow guidelines provided under the Metro Railways (Construction of works) Act 1978 (hereinafter referred to as ""Act""). The submission of the

petitioner is that Act provides number of safeguards in favour of the residents, whose buildings and lands are likely to be affected by the proposed

construction of Railway lines.

7. It is the submission of the petitioner that by way of first step, an application is required to be made to the Central Government by the third

respondent, to declare its intention to acquire such lands, buildings, street, etc. by issuing a notification. It is thereafter, by following procedure laid

down under the Act that the Company can proceed with the construction of Metro Railway line.

8. It is the submission of the petitioner that before acquiring land, the objections are to be invited from the owners of the lands, buildings, streets,

etc. and it is after hearing of the said objections, the work can be proceeded with. This averments have been made in view of Chapter III of the

Metro Railways (Construction of Works) Act. The relevant sections falling under Chapter III are reproduced below:

6.Power to acquire land, etc.-Where it appears to a metro railway administration that for the construction of any metro railway or any other work

connected therewith

(a) any land, building, street, road or passage, or

(b) any right of user, or any right in the nature of easement, therein, is required for such construction or work, it shall apply to the Central

Government in such form as may be prescribed for acquiring such land, building, street, road or passage or such right of user or easement.

#### 7. Publication of notification for acquisition.

(1) On receipt of an application u/s 6, the Central Government, after being satisfied that the requirement mentioned therein is for a public purpose

may, by notification in the Official Gazette, declare its intention to acquire the land, buildings street, road or passage or the right of user, or the right

in the nature of easement, therein referred to in the application.

(2) Every notification under sub-section (1) shall give a brief description of the land, building, street, road or passage.

(3) the competent authority shall cause the substance of the notification to be published in such places and in such manner as may be prescribed,

#### 8. Power to enter for survey, etc.-On the issue of a notification under subsection

(1) of section 7, it shall be lawful for the metro railway administration or any officer or other employee of the metro railway

(a) to enter upon and survey and take level of the land, building, street, road or passage specified in the notification;

(b) to dig or bore into the sub-soil;

(c) to set out the intended work;

(d) to mark such levels, boundaries or lines by placing marks and cutting trenches;

(e) to do all other acts necessary to ascertain whether the metro railway can be laid upon or under the land, building, street, road or passage, as

the ease may be: Provided that while exercising any power under this section the Metro railway administration or such officer or other employee

shall cause as little damage or injury as possible to such land, building, street, road or passage, as the case may be.

#### 9. Hearing of objection.

(1) Any person interested in the land, building street, road or passage may, within twenty-one days from the 1[ date of publication under sub-

section (3) of section 7 of the substance of the notification under sub-section (1) of that section] object to the construction of the metro railway or

any other work connected therewith upon or under the land, building, street, road or passage, as the case may be. 2[ Explanation.--For the

purposes of this sub-section, where the substance of the notification under sub-section (1) of section 7 is published on different dates at different

places, the last of such dates shall be deemed to be the date on which substance of the notification has been published.""] (2) Every objection under

sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the

objector an opportunity of being heard, either in person or[ by an agent or] by a legal practitioner, and may, after hearing all such objections and

after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.-For the purposes of this sub-section"" legal practitioner"" has the same meaning as in clause

(i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961 ).

(3) Any order made by the competent authority under sub-section (2) shall be final.

10. Declaration of acquisition.

(1) Where no, objection under sub-section (1) of section 9 has been made to the competent authority within the period specified therein or where

the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be,

submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the

Official Gazette, that the land, building, street, road or passage, or the right of user, or the right in the nature of easement, therein for laying the

metro railway should be acquired.

(2) On the publication of the declaration under sub-section (1), the land building, street, road or passage, or the right of user, or the right in the

nature of easement, therein shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, building, street, road or passage, a notification has been published under sub-section (1) of section 7 either for its

acquisition or for the acquisition of the right of user, or any right in the nature of easement, therein, but no declaration under this section has been

published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect: 3[

Provided that in computing the said period of one year, the period or periods during which any action or proceeding to be taken in pursuance of

the netification issued under sub-section (1) of section 7 [ including any such action or proceeding pending immediately before the commencement

of the Metro Railways (Construction of Works) Amendment Act, 1987] is stayed by an order of a Court, whether granted be-fore or after such

commencement, shall be excluded.]

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

11. Power to take possession. 4[ Where any land, building, street, road or passage has vested under sub-section (2) of section 10 and the amount

determined by the competent authority u/s 13 with respect to such land, building, street, road or passage has been deposited, under sub-section

(1) of section 14, with the competent authority by the Central Government], the competent authority may by notice in writing direct the owner

1. Subs. by Act 41 of 1982, s. 4, for certain words (w. e. f 15-5-1983 ).

2. Ins. by s. 4, ibid. (w. e. f. 15-5-1983 ).

3. Added by Act 42 of 1987, s. 2.

4. Subs. by Act 41 of 1982, s. 5, for certain words (w. e. f. 15-5-1983 ).

as well, as any other person who may be in possession of such land, building, street, road or passage to surrender or deliver possession thereof to

the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If. any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply,

(a) in the case of any land, building, street, road or passage situated in any area falling within the Presidency-town of Bombay, Calcutta or Madras,

to the Commissioner of Police;

(b) in the case of any land, building, street, road or passage situated in any area other than the area referred to in clause (a), to the Executive

Magistrate, and such Commissioner or Magistrate, as the case may be, shall enforce the surrender of the land, building, street, road or passage to

the competent authority or to the person duly authorised by it.

12. Right to enter into the land where right of user, etc., is vested in the Central Government, Where the right of user in, or any right in the nature of

easement on, any land, building, street, road or passage has vested in the Central Government u/s 10, it shall be lawful for the metro railway

administration or any officer or other employee of the Central Government to enter and do any other act necessary upon the land, building, street,

road or passage for carrying out the construction of the metro railway or any other work connected therewith.

9. It is submission of the petitioner that the respondent No. 3 announced in local newspaper in 2008 its proposal to hold consultation with the

public for 3 days, particularly persons whose properties are likely to be affected. The time and place to hold consultation was fixed in the public

notice issued. The notices were also issued to the concerned person. The proposal to construct a Railway line is opposed on the ground that the

third respondent has changed the original alignment and also depth at which the construction was to be made. The earlier proposal was to lay

down Railway line at the depth of 100 ft. from the surface of the earth which has now been reduced to 33 ft. below the surface of earth.

10. It is also the submission of the petitioner that as per the new alignment, the Railway line is to be laid down under the densely populated area,

furthermore almost every house in George Town and 7 Seven wells area has only a single well that supports the houses and about 3000 to 5000

houses are likely to be affected by deviation of the original alignment.

11. It is also the apprehension of the petitioner that proposed excavation of 33 ft. below surface of earth is likely to pose a grave danger to the life

of the people and safety of the houses, as it would cause massive vibration of earth which houses will not be able to withstand.

12. The case of the petitioner is that their request for adhering to original alignment was not accepted. It is also the submission of the petitioner that

the respondents have now sent notice dated 28.11.2011 directing the owners/tenants of the buildings to close their bore-wells and open wells

within the restricted zone of 16.5 meters, on either side of metro rail alignment, thereby denying the right of getting water from the existing bore-

wells and open wells.

13. It is further submitted that the respondents are likely to use chemical to compress the loose soil surrounding the underground railway line which

will solidify the earth like a rock and thereby right of getting water in future would also be lost to the respondents. The petitioner claims to have

sent number of representations to the higher authorities.

14. Counter has been filed by Chennai Metro Rail Limited, the third respondent herein. One of the objections taken is that the petitioner's association

even before registration on 14.11.2011 have sent representation dated 10.10.2011 to furnish the sketch of the Railway track, for claiming

damages, depth of the tunnels for construction of the project and about the depth of bore-well and construction of building.

15. In reply to the said request, the Company planned the public interaction meeting on 29.10.2011 at 8.00 a.m. at Sriramulu park and the

President and other members of the petitioner were directed to attend the meeting. The stand of the respondent No. 3 is that opportunity stands

granted to the general public, to interact with the officials of the Company.

16. That the stand of the respondent No. 3 in counter is:

(a) That as regards the change of alignment is concerned, the selected alignment is the shortest route to reach Mannadi from Washermenpet and

therefore, the selected alignment is the best. The alignment at old Jail road was not found to be technically feasible, as old Jail road is 25 meters

away from Washermenpet station exit and tunnels need at least 25m straight length and minimum of 200m radius to make a turn and accordingly, it

is not possible to go along the Old Jail road.

(b) That Washermenpet station location is so positioned to facilitate the future extension towards Tiruvettiyur (Wimco Nagar) for which detailed

project report for 9 Km has been approved by the Government of Tamil Nadu and sent to the Government of India for approval.

(c) That alternative alignment geometry radius cannot accommodate the Rolling stock. It is also the stand of the company that station box outer

wall construction is almost completed in the tunnel launch shaft area; tunnel boring machines (TBM) have arrived, and all preparations for tunneling

is on and therefore, it is not possible to change the alignment at this point of time.

(d) That between Washermenpet and Mannadi, the tunnel runs through mainly sand-clayey stratum. The Earth Pressure balance TBM, which are

being deployed in this section, in the controlled closed face mode will always maintain a pressure equivalent to the earth pressure and at the same

time advances gradually. Between Washermenpet and Mannadi since the medium is sandy clayey, the pressure required for advancement is very

less and the vibration generated will be substantially low. The generated minor vibration also will get absorbed by the sandy clayey strata and the

people living in the houses above will not even feel it and this will have negligible effect on the structures above. This practice of tunneling below

buildings has been done in many places worldwide and is a proven method.

(e) That since Washermenpet is a terminal station and is off the road, TBM tunnel launching for package 1 from Washermenpet upto Central is

proposed from Washermenpet station. If there is a delay on the tunneling in this section, the completion of Chennai Central Station will get delayed

and it will affect commissioning of both the underground sections of Corridor 1 & 2 (54% Chennai Metro Rail Limited project corridor). This

delay will cause a huge claim from the contractor in a range of Rs. 18-20 lakhs/day since all the contractors, machinery will be in idle and it will

affect the most of the UAA 01 package tunneling between Washermenpet-Mannadi High Court-Chennai Central. This delay will also have

cascading effects on the Civil and System contracts which are under implementation now.

(f) That the implementation of the Chennai Metro Rail Project was approved by the Government of Tamil Nadu in November 2007. After detailed

examination, the Government of India approved the project in February 2009 based on the detailed project report prepared by Delhi Metro Rail

Corporation and approval of the State Government of Tamil Nadu. JICA (the Japanese Government agency) approved the funding of 60% of the

project cost. Based on the study and decision of the Government, two corridors were selected for implementation viz., Corridor I from

Washermenpet to Airport and Corridor II Chennai Central to St. Thomas Mount.

Corridor Length

Washermenpet to Airport 23.1 Kms

Chennai Central to St. 22.0 Kms

Thomas Mount

Total 45.1 Kms

Description of Alignment

Corridor I

Washermenpet - Mannadi -High Court -Chennai Central Station - along Cooum River -Government Estate -LIC-Gemini -Anna Salai -Saidapet -

Guindy -Chennai Airport.

Corridor II

Chennai Central-along EVR Periyar Salai - Egmore -Kilpauk Medical College -Pachaiappas College -Shenoy Nagar-Anna Nagar East -Anna

Nagar 2nd Avenue - Tirumangalam-Koyambedu - CMBT-along Inner ring road -Vadapalani-Ashok Nagar - SIDCO - Alandur -St. Thomas

Mount. On approval of the project by Government of India and JICA, Chennai Metro Rail Limited appointed a General consultant consisting of

five member consortium viz., Egis Rail System of France, Maunsell-AECOM of Hongkong, YEC of Japan, Egis India and Barsyl in April 2009 to

assist Chennai Metro Rail Limited in the implementation of the project. Preliminary designs prepared by the DMRC were further reviewed by the

General Consultants and were validated for implementation. The entire project was divided into various packages and entire procurement process

of 21 packages have been fully completed and works are at different stages of construction. One of the major components of the project is the

Design and Construction of the Underground Stations and the Associated Tunnels". The Underground Stations and the Associated Tunnels run

from Washermenpet to Saidapet along corridor I and from Chennai Central to Thirumangalam along corridor II. One of the packages of

underground work along Corridor I is the work of constructing stations at Washermenpet, Mannady, High Court, Chennai Central and at May

Day park and building the associated tunnels.

17. With regard to the stand of the petitioner that there is violation of provisions of Act and the safeguard provided thereunder, the positive stand

taken of the respondent No. 3 is that provisions of Chapter III of the Act are applicable to "land acquisition", whereas Chapter IV are applicable

to "Construction works". The submission of the respondent No. 3 therefore is that the provisions of Chapter III would be applicable only when the

land is acquired, but in this case, the lands are not acquired and therefore, provisions of Sec.6 to 17 reproduced above are not applicable.

18. With regard to the right of the petitioner to draw water through bore-wells is concerned, the positive stand of the respondent No. 3 is as under:



I submit, with regard to the averments made in para 7 of the affidavit, that the Top officials of the respondent Company had arranged for a public

meeting in the Sri Ramulu Park in the area on 29.10.2011 and 25.11.2011 and interacted with the people of that locality viz., seven Wells and

assured them that no adverse effect will be there to the surrounding buildings during execution of the project and that the change of alignment is not

feasible. This respondent has given enough opportunity to the general public of the area to get their doubts cleared, to know the importance of the

project, and to realize that there is no adverse effect as they apprehend under wrong notions. Further, Chennai Metro Rail Limited has served

notices u/s 19 of the Act of the intention of Chennai Metro Rail Limited to close bore wells and wells along the restricted zone after providing

alternate bore wells or providing compensation of Rupees one lakh, whichever is desired by the owners, after making house to house visits to

survey bore wells and explained the process involved.

19. The apprehension of the petitioner that tunnel of 33 ft. below the earth is likely to damage their house and thus put their life and properties to

danger, it answered as under:

I submit, with regard to the averments made in para 10 of the affidavit, that the Earth Pressure Balance (EPB) tunneling method permits going

below existing buildings minimizing any risk of damage to the structures above and hence the shortest path is the globally adopted method in

selection of metro tunneling routes between two points. The selected alignment is the shortest route to reach Mannadi from Washermenpet and

accordingly the selected alignment is the only feasible alignment keeping in mind the widths of roads here. The area between Washermenpet and

Mannadi is thickly populated with narrower streets and elevated viaduct construction would have led to large scale acquisitions besides causing

serious inconvenience and serious risk due to elevated construction to people all along the narrow streets in this stretch on a daily basis over the

entire alignment. On the other hand, use of the underground tunneling technique causes least disturbance to the public, both in terms of time and

intensity compared to elevated construction. Taking the alignment along with Old Jail road was technically not possible as Old Jail road is 25m

away from the Washermenpet station exit and tunnels need atleast 25m straight length and minimum of 200m radius to make a turn and accordingly

it is not technically feasible to go along Old Jail road. The Washermenpet station has been so aligned so as to permit the proposed extension of the

metro alignment from Washermenpet to Wimco Nagar. The station box outer wall construction at Washermenpet is almost completed in the tunnel

launch shaft area. One tunnel boring machine has arrived, and all the preparations for tunneling is now on. Technically it is not feasible to have any

other alignment or method of construction. There has been only one alignment from the beginning, approved by the Government and technical

experts and there was no change in alignment.

20. Further, it is pleaded that with regard to the averments made in para 11 of the affidavit, that twin tunnels of 6.6m excavation diameter using

Earth Pressure Balance (EPB) Tunnel Boring machine (TBM) is proposed along the underground corridor. If the bore wells/wells along the

restricted zone are not closed during the operation of the TBM boring, solid and liquid materials under pressure may come out through the

bore/open wells causing loss of pressure at the tunnel head which in turn can lead to loss of pressure below ground and cause damage to nearby

structures within a zone of 16.5m on both sides of the centre line of alignment ("Restricted Zone"). To overcome the above problem, it is absolutely

necessary to close the entire existing and abandoned bore and open well within the restricted zone of 16.5m on both sides of the centre line of

Chennai Metro Rail Limited alignment. This standard methodology has been followed worldwide in all underground tunneling projects, including the

underground projects implemented in Delhi and Bangalore.

21. Notices has been served u/s 19(1) (f) of The Metro Railways (Construction of Works) Act, 1978 to all occupiers/ owners of houses in the

restricted zone regarding bore/open wells which need closure. Chennai Metro Rail Limited has formulated a policy to provide alternate bore wells

or compensation (in case the owner does not want an alternate bore wells) to the affected houses according to the choice of the house owner. The

respondent No. 3 has already communicated to the concerned occupiers/owners that the Company will install an alternate bore well before the

existing well or borewell is plugged. Hence, the petitioners or other concerned occupiers will be provided uninterrupted access to water from

borewells.

22. As regards the installation of borewells after the project is completed, Chennai Metro Rail Limited will regulate the same taking into account

the safety of the Metro Rail tunnel already done u/s 19(1) of the Metro Railway (Construction of work) Act, 1978 under its supervision. Hence,

the allegation of the petitioner that the basic right is snatched is false and misleading.

23. In view of the stand taken hereinabove, by the respondent No. 3, the writ petition deserves to be dismissed.

24. The learned counsel for the petitioner vehemently contended that the petitioners are entitled to a writ in the nature of prohibition,as

establishment of Railways for the carriage of passengers and goods, falls under item No. 30 in the Union list under VII Schedule of the Constitution

of India and therefore, it is not possible for the Union of India to shift its obligation and responsibilities to any other agency, by violating the

provisions of the Constitution of India.

25. This contention of the learned counsel for the petitioner deserves to be noticed to be rejected. The Metro Railways (Construction of works)

Act, 1978 is a central Act and is regulated by the Central Government. It cannot be said therefore, that the work being carried out under the Act in

violation of provisions of the Constitution of India. The statutes of the Parliament has laid down the detailed procedure, and has protected the rights

of the persons. The petitioner has not challenged the constitutional validity of the Act and therefore, it cannot be said that the Union of India has

obligated its responsibilities under Constitution to any other agency.

26. The learned counsel for the petitioner vehemently contended that before starting the construction work or laying railway line, it is the duty of the

respondent first to apply to the Central Government in terms of Sec.6 of the Act and it was on the issuance of notification by the Central

Government, any further construction could be carried out by the petitioner.

27. The contention of the learned counsel for the petitioner was that the word ""any right of user"" in Sec.6(b) of the Act also covers any right of the

user, which includes the right to bore-well and the open wells. Therefore, before closing the borewells or the wells, it is necessary to acquire the

right by issuing notification under Sec.6 of the Act, and having not done so, the action of the respondents in laying railway line underneath the lands

belonging to the members of the petitioner association is against the provisions of the Act.

28. This contention of the learned counsel for the petitioner though look attractive, but when seen in depth, has no legs to stand. The Chapter III

deals with acquisition of land. It is not the case of the petitioner that before laying down underground railway line, land was required to be

acquired. Therefore, ""any right of user"" in Sec.6(b) is to be read with subsequent part of the section which deals with acquiring of lands, buildings,

streets, passage or such right of user for easement. The use of bore-well therefore, will not be covered under Sec.6(b) as contended by the

learned counsel for the petitioner. Once Chapter III of the Act is not applicable to construction, the petitioner cannot claim that the laying of

railway line is violative of the section 6 of the Act or that any right of the petitioner is violated. The right at best of the petitioner is to have water, this

right of the petitioner is duly protected as per the stand in the counter filed by the respondent No. 3.

29. The respondent No. 3 is right in contending that construction work comes under the Chapter IV of the Act and in terms of Sec.19 of the Act,

not only opportunity of hearing have been given, but also the interest of the people have been safeguarded by affording alternative bore-wells or

compensation. The petitioner therefore

30. The other apprehensions of the petitioner that the construction is likely to pose grave danger to their life and building is also misconceived in

view of the positive stand of the respondent No. 3 as reproduced above that the construction is being raised in a safe manner by protecting the life

and liberty of the person concerned. For the reasons stated hereinabove, this Court finds no merit in the writ petition, which is accordingly ordered

to be dismissed, but with no order as to costs.