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W.P.No. 15021 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	13.12.2023
Orders Pronounced on	22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

W.P.No. 15021 of 2019
and
W.M.P.No. 14986 of 2019

N. Ponsingh

... Petitioner

Vs.

1. The Secretary to the Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai – 600 009.
2. The Secretary to the
Government of Tamilnadu,
Home Department,
Fort St. George, Chennai – 600 009.
3. The Commissioner,
Land Administration Department,
Ezhilagam, Chennai -600 005.
4. The District Collector,
Chennai District,
Singaravelar Maaligai,
Rajaji Salai, Chennai - 600 001.



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5. The Joint Commissioner of Police,
West Zone,
Ambattur, Chennai - 600 053.

6. The Tahsildhar,
Ambattur Taluk,
Ambattur, Chennai – 600 053.

7. The Inspector of Police,
T3, Korattur Police Station,
Chennai – 600 080.

8. K.K. Rajendran

9. R. Jayaraj ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Declaration, declaring that the order passed by the Fourth respondent made in Na.Ka.No.J. 13/22001/2018 dated 08.05.2019 as null and void and unconstitutional, consequently direct the respondents to remove the fencing put up in lands comprised in Survey No. 320/2B, Padi Village, Ambattur Taluk, Chennai District, by abutting the access to shops of the petitioner.

For Petitioner : Mr. V.C.Janarthanan
for Mr. C.Prabakaran

For Respondents : Mr. Gurunathan
Additional Government Pleader
(for R1 to R4 and R6)

Mr. S.Sugendran
Additional Public Prosecutor
(for R5 and R7)



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Mr. N.A.Nassir Hussain (for R8)

Mr. R.Jayaraj (for R9)
Respondent in Person

ORDER

The petitioner has filed the present writ petition to declare the order passed by the fourth respondent made in the Na.Ka.No.J. 13/22001/2018, dated 08.05.2019 as null and void and unconstitutional, and consequently direct the respondents to remove the fencing put up in the lands comprised in Survey No.320/2B, Padi Village, Ambattur Taluk, Chennai District.

2. The brief facts of the Writ Petition, as per the affidavit filed by the petitioner is that the petitioner is carrying on business in the Patta land for the past 32 years under the name and style of M/s.Sabarivasan Hardwares. The same was purchased during the year 1998 to 2001 under various sale deeds. Adjacent to his Patta land, a Government land is existing, comprised in Survey Nos. 320/2B and 320/2C totally an extent of 7.5 cents. The said land is classified as “Punjai Tharisu” land in the Revenue Records.



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3. The above said Government lands are existing in front of his

Patta land and he is constrained to use the said land for access to his shop and other lands by way of entrance enabling to reach the Patta land, which are attached thereon. He is in continuous possession and enjoyment of the properties of the said land for all these years. He has also got a right of easement for ingress and egress of his Patta land through the said property. Further, he stated that, his vendor V.M.Chacko was granted lease in respect of the above said Government land to an extent of 7.50 cents under G.O.Ms.No. 841, dated 11.05.1988, Revenue Department and his vendor was in possession and enjoyment of the property for convenience since from the date of lease. After, purchasing the land, the petitioner is also continuing in his possession and enjoyment of the Government land for his convenience and usage, as the said land is situated between his Patta land and Highways Road, which is the only access for ingress and egress of his Patta land wherein he is in conducting the business under the name and style of Sabarivasan Hardwares for the past 32 years. Initially, the petitioner made an application on 28.10.2002 requesting for grant of lease, pursuant to which the Revenue Officials conducted the field inspection and submitted the report dated 28.06.2004, to the Revenue Divisional Officer, Ponneri. Unfortunately, the same was not proceeded with.



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4. Further, as the requirement of the land and grant of lease hold right became vital and indispensable for the petitioner to continue the business as well as usage of his Patta land, he also made an application to the third respondent seeking to grant of lease hold right in respect of the above said Government land and on 23.02.2012, the third respondent forwarded the communication to the fourth respondent on 04.04.2012 directing to take appropriate action and forward the report for the same. The sixth respondent also conducted field inspection along with the surveyor and proposal was also sent to the District Revenue Officer, Thiruvallur, through the Revenue Divisional Officer, Ambattur on 10.03.2013. Pursuant to that, the Revenue Divisional Officer, Ambattur also sent the proposal to the District Revenue Officer, Tiruvallur dated 09.07.2013. Based on that, the District Revenue Officer entered into the proposal for grant of lease in his favour to the Third respondent in his communication dated 18.12.2014. Subsequently, the first respondent rejected his request for lease of the said land. Aggrieved by the same, he filed a writ petition before this Court in W.P. No. 6199 of 2017 and the same is also pending before this Court.

5. In the meantime, there was also eviction proceedings under the Tamil Nadu Land Encroachment Act, which also attained finality in



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W.P.No.3491 of 2018 by order dated 13.03.2018. Since he was directed to

evict, he has surrendered the vacant possession of the Government land to the Government and the same was also duly recorded. Further, it is stated that the petitioner also submitted a representation dated 19.01.2019 through Registered Post to the third and fourth respondents and till now, the said representation is pending. During the eviction proceedings, the fourth respondent dismissed his appeal filed under Section 10-A of the Tamil Nadu Land Encroachment Act, wherein it was observed that the subject matter of the land is required for the purpose of widening of the Chennai to Thiruvallur High Road and further, the information furnished by the Member Secretary, CMDA also reveals that the proposed street alignment of Chennai to Thiruvallur High Road is 45 meters to the said land and also required for free access to the commuters of the road.

6. All of a sudden on 16.05.2019, the Revenue officials and about 50 Police officials came to the Government land, which is in front of the patta land of the petitioner and put up an iron wired fencing by abutting access to his shop completely. Therefore, he was not able to even open his shop and when he enquired, he came to know that the fourth respondent passed an order dated 08.05.2019 directing the sixth respondent to make entry in the Revenue Records that the land comprised



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in Survey No. 320/2B, measuring an extent of 14 cents of land, was allotted to construct of Korattur Police Station and the land was handed over to the Police Department. It is further stated that all the land Revenue Records and Town Survey Records maintained by the respective Authorities, are directed to make entries to the land that belonged to Police Department. The above said communication amounts to violation of their own records and there are no concrete materials to make such Revenue entries, since the land all along belonged and it stood as “Punjai Tharisu Poramboke”. Further, in the eviction proceedings, the fourth respondent has recorded that the land is required for Highways Department for widening of the road for public for free access.

7. Further, it is stated that the Korattur Police Station is being run in its own land for the past 15 years and as of now, no separate land is required for the said police station to make any construction and furthermore, all along, only the Revenue Authorities have possessed, police department was not in possession at any point of time. Therefore, the impugned communication of the fourth respondent is opposed to public policy and the same is liable to be declared as “ultra-vires” and unconstitutional one and therefore the present writ petition is filed for the relief stated supra.



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8. The sixth respondent has filed his counter affidavit stating that the land in S.No.320/2B of Padi Village, Ambattur Taluk of an extent of 0.05.5 ares or 14 cents, is originally classified as Dry Assessed Waste land which was transferred to the Police Department for construction of Korattur Police outpost by way of Proceedings of the District Collector, Chengalpattu, dated 03.11.1976 in Order No. 122428/1976/B1. The said land in S.No. 320/2B of an extent of 6.5 cents and the land in S.No. 320/2C of an extent of 1 cent, of total 7.5 cents were originally leased out to one V.M. Chacko. Lease was granted, vide G.O.Ms.No. 841, Revenue (D1) Department, dated 11.05.1988 for a period of three years with effect from 11.05.1988 and lease expired on 10.05.1991 with the concurrence of Home Department. But the said V.M.Chacko had neither paid lease amount, nor renewed the lease.

9. The present writ petitioner purchased the above said Government Poromboke land in S.No. 320/2B of an extent of 6.5 cents and the land in S.No. 320/2C of an extent of 1 cent, along with the other land from the said V.M.Chacko through illegal registered documents and is now occupying the land unauthorisedly, even after knowing the consequences of the fact that the said V.M.Chacko had no interest in the said property. The Commissioner of Land Administration, in his letter



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dated 04.08.2009 directed the Revenue Authorities to lodge a complaint

against the petitioner and also to initiate action to resume the Government

land. One Thiru.K.K.Rajendran filed a writ petition in W.P.No.29831 of 2016, in which this Court had passed an order on 29.08.2016 to remove the encroachments in S.Nos.320/2B and 320/2C. Therefore, the encroachment was removed and the petitioner was evicted under the provisions of Tamil Nadu Land Encroachment Act, 1905. The request of the Writ petitioner for leasing the above said land, was also rejected by the order in G.O. 54, Revenue Department, dated 23.02.2017. The appeal filed by the petitioner under Section 10(1) of the above said Act, was also rejected by the fourth respondent on 29.03.2017. The Writ petitioner also filed a Revision Petition before the Commissioner of Land Administration due to delay in filing the petition. The said Revision Petition was dismissed on 05.12.2017.

10. The Writ petitioner also filed a petition in W.P.No 3491 of 2018 against the order of the District Collector, Thiruvallur under Section 10(A)(1) of the Tamil Nadu Land Encroachment Act, 1905 and to forbear the respondents from interfering with the petitioner's peaceful possession of the above said Government land. This Court also passed an order dated 13.03.2018 granting time till 10.06.2018 to the petitioner herein to remove



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his entire belongings, which are kept in the encroached land and hand over

the vacant possession of the land, failing which, it is open to the

Authorities concerned to take assistance of Police and remove the same and thus the encroachment was removed. The Government land in Survey

No.320/2B was originally classified as “Dry Assessed waste” which was transferred to the Police Department for construction of Korattur Police outpost in District Collector, Chengalpattu Proceedings dated 03.11.1976.

Taking advantage of the fact that the necessary changes were not carried out in the Revenue Records, the petitioner encroached the land and also enjoyed unauthorized occupation of the Government land all these years.

Now, the petitioner claims it as a matter of right, which is illegal and unlawful.

11. The District Collector, Chennai and the fourth respondent in his Proceedings dated 08.05.2019 passed order for necessary changes to be carried out in the Revenue Records. Therefore, necessary changes were carried out in the current Town Survey Register and other connected records and a copy of the same was communicated to the Home (Police) Department. The above said land is under the control of the Police Department and the same was covered with wired fence. There is proper access to his shops through the road on the Eastern side and the petitioner



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has not only encroached the land and also enjoyed unauthorized occupation the Government land all these years and not as if the petitioner has no access to his shop from main road. The petitioner thoroughly misleading the Court. The petitioner has not come to the Court with clean hands. Therefore, he prayed to dismiss the writ petition.

12. The seventh respondent also filed counter affidavit in which he reiterated the averments made in the counter filed by the sixth respondent and in addition to that, they also stated that the possession of the aforesaid police land was already handed over to the Police Department on 23.11.1976 and now, after removal of encroachments, as per the orders of the Division Bench of this Court dated 23.11.2018 and the above said land was fenced for preventing future encroachments. Further, anticipating the protest from the petitioner and his associates, while fencing, in order to maintain the law and order, adequate Police strength was deployed at the spot.

13. The petitioner also filed an undertaking affidavit before the Division Bench of this Court in W.P.No. 3491/2018 to quit from the subject land. Therefore, the petitioner has no locus-standi to file this Writ Petition contra to his undertaking and more or less for the same relief. The impugned order of the fourth respondent dated 08.05.2019 is nothing but a



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direction for incorporation of subject police land in the Town Survey Register in correlation with the old Revenue records, which had been mutated in the year 1976, as per the proceedings of the District Collector, Kancheepuram, R.Dis. 122.428/76 B1, dated 03.11.1976 and the petitioner, without challenging the aforesaid original proceedings 03.11.1976, cannot challenge the consequential order of the fourth respondent, dated 08.05.2019 which is impugned order to challenge before any Court of Law. The fourth respondent only directed to carried out in the Revenue Records and entry of Police Department Poramboke now has to be restored in the Town Survey Records of Ambattur Town and Taluk.

14. Further, it is stated that the petitioner has no locus-standi to question the usage of the subject land by the Department. Since, unfortunately the Police land was encroached by the petitioner and his vendor, several lands were encroached by the petitioner and his vendor, several attempts were made by the Revenue Authorities to remove the encroachments, but the petitioner and his vendors forestalled the eviction for about four decades by initiating several vexatious litigations before this Court and other forum. Therefore, the Police Department is not in a position to take possession and utilize the subject lands for public purpose.

Since the encroachments are now removed, the subject land was now



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protected by fencing and the same will be utilized for required public purpose. The petitioner and his vendor illegally utilised the subject land for about 40 years by adopting various methods, for his self enrichment. In the same way, the petitioner is now making an attempt before this Court by filing this petition for sanction to utilise the subject land by suppressing the earlier rounds of litigations and by stating misleading information. If at all the petitioner is aggrieved against the fencing put up in the police land comprised in S.No. 320/2B of Padi Village and if the same causes obstruction for access to his alleged Patta lands or the shops, the petitioner is always at his liberty to work out the remedy before the appropriate forum. Therefore, the writ petition filed by the petitioner is not maintainable.

15. The ninth respondent who appeared in person had filed the counter stating that the petitioner has wrongly projected the case, as if he owns a Patta land at Door No.881/1-8 MTH Road, Padi, Chennai-600 050 and on account of the fence put up on the aforesaid Police land, the access for his shops are obstructed. But, in contra, as per Survey Settlement Register, the alleged Patta land of the petitioner comprised in S.No.1177 of Korattur Village is originally registered as “Villagers” for communal usage of public and later it was found to have been tampered with and fraudulent



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Patta was also issued to the petitioner and his vendor. However, based on the complaints filed by father of the ninth respondent and one Mr. Shanmugam, the Tahsildar, Ambattur has recommended for cancellation of the aforesaid Town Survey Land Register entries mutated in favour of the petitioner and recommended to restore back the original classification “Villagers” in the Town Survey Land Records and sent his report to the RDO, Central Chennai Division. But, unfortunately the RDO who is in connivance with the petitioner, is not inclined to cancel the above fraudulent Patta issued to the petitioner. Therefore, an appeal has been preferred before the DRO, Chennai District for cancellation of the above alleged Patta by the aforesaid complainant Mr. Shanmugam and it is pending. Further, in the land use information provided by the CMDA in CMA Master Plan 2026, the petitioner’s alleged Patta land was marked as “Road” purpose land and the petitioner is also fully aware of the above entire facts and it is further stated that the petitioner’s vendor Mr. V.M. Chacko had originally constructed a commercial shopping complex in the alleged Patta land by encroaching on the subject Police and Revenue lands and thereafter, it was sold to the petitioner along with various litigations. The petitioner and his vendor were utilizing the subject shop buildings for their business purposes and not for access purposes.



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But, the petitioner and his vendor by adopting various dodging methods, managed to stay on the subject Government lands for all those years by forestalling the eviction proceedings initiated by the Government.

16. It is further stated that in the year 1980, the aforesaid Mr.V.M.Chacko had put up unauthorized commercial shop building on the alleged Patta land comprised in S.No. 1177 of Korattur Village, along with the aforesaid Police and Revenue land. The aforesaid illegal shopping complex was locked and sealed in the year 1980, before its inauguration and eviction proceedings were also initiated for removal of the unauthorized building on the aforesaid Police and Revenue land. However, Mr.V.M. Chacko with his money and political power, managed to get temporary lease for the encroached portion of the Police land of an extent of 6 ½ cents in S.No.320/2B and Revenue land of an extent of 1 cent in S.No.320/2C of Padi Village for a period of three years, vide aforesaid G.O.Ms.No.841 and said lease had also got expired on 10.05.1991. But, the aforesaid Mr.Chacko neither paid the lease rent, nor renewed the lease on its expiry and therefore, again eviction proceedings were initiated by the Revenue authorities. Since the subject land was encroached by way of pucca shop building and was not kept vacant, there was no “easement by necessity” as claimed by the petitioner. In this regard, even assuming that



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the shops were constructed on the absolute Patta lands comprised in 1177/1 part of Korattur Village and the said land has 30 feet access on the eastern side namely Shanthi Nagar main road. Therefore, the petitioner's claim of easement rights over the subject Government land for the unauthorized shopping complex, constructed on the alleged Patta land, is utterly false and unsustainable.

17. Ninth respondent further stated that the petitioner earlier made lease request which was rejected by the Tahsildar, Ambattur and the petitioner has challenged said lease rejection order and eviction proceedings before this court and had filed series of Writ petitions, viz. W.P.No. 17525 of 2009, W.P.No. 19516 of 2009 and W.P.No. 19516 of 2009 and all were dismissed on 16.02.2010. The petitioner, by suppressing the above facts, had repeatedly made lease attempts only to forestall eviction proceedings and to utilize the land for his self-enrichments as adopted by his vendor. Further, the suppression of the above fact was also suspected by this court and vide order dated 16.03.2017 in W.P.No.6199/2017, directed the Registry to put up E.Bs relating to the above dismissal order dated 16.02.2010 and further stated that the petitioner failed to hand over the possession to the Government within the due date. Therefore, the Revenue Authorities removed the



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encroachments with Police protection on 18.06.2018. However, even after

evicting the petitioner from the subject land on 18.06.2018, the petitioner

is still utilizing a portion of the subject and Revenue lands for access

purpose and the same is evident from his own representation dated

19.01.2019 in which he himself has admitted that he is utilizing the subject

lands for access purpose, which amounts to clear violation of his own

undertaking dated 15.03.2018 given before this court in the above

W.P.No.3491/2018 and hence, the petitioner deserves for grant of no relief

in the present writ petition and the proposed width of road widening is

only about 15 meters from the center point of the existing Road. Since the

original allotment of the subject land is for construction of Korattur Police

Out-Post and that the land left remained even after said expansion

proposal which would be more sufficient to meet the said purpose or such

other Department purpose and therefore, the petitioner need not worry for

the future Road expansion projects or other public purpose.

18. The petitioner himself has already filed an undertaking

affidavit dated 15.03.2018 before the Division Bench of this court in

W.P.No.3491 of 2018 to quit from the subject lands on or before

10.06.2018. But the petitioner failed to comply with his above undertaking



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and not removed the encroachments and handed over the possession of the

Government land within specified date. Therefore, as per the above order

of this Court dated 13.02.2018, the Revenue Authorities proceeded and

removed the encroachments made by the petitioner on 18.06.2018, with

the assistance of Police protection. Thereafter, in compliance of the

Division Bench order dated 23.11.2018 of this Court in W.A.No. 2559 of

2018 and in consonance to G.O.Ms.No.54, Revenue [LD2(1)] Department,

dated 23.02.2017, the subject land was protected by fencing by the Police

to prevent future encroachments. Further, it is an admitted fact by the

petitioner and his vendor and also traceable from various G.O's,

Government communication letters and in Village Adangal that the subject

land in S.No.320/2B belongs to the Police Department. The petitioner

himself admitted the said fact in his objection letter dated 10.08.2016 sent

to the Revenue and Home Secretaries. But, due to the negligence of the

Revenue officials the name in the Revenue Records was removed for some

period of "Fasli years". The petitioner with an ulterior motive, has sworn

this false information in his affidavit contrary to the records, only to

mislead this Court to get some favourable orders and also stated that the

petitioner himself was a party to the proceedings in G.O.Ms.No.308,

Revenue & DM Department, dated 21.09.2017 and has filed his objections



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to grant lease in favour of his wife Mrs.Sathiyabama, admitting that the

subject land belongs to Home Department and the said G.O. was also

served on the petitioner. But, the petitioner, at no point of time, has made

any objection or challenged the above G.O. in any proceedings. The reason

for not raising any objections by the petitioner to the above G.O. is that the

petitioner would have thought that the subject lands will be kept open and

vacant and it could be utilized for his business purpose, without any

objections. But unfortunately, as the subject land was protected by fencing,

the petitioner has rushed before this Court seeking removal of the fence put

up on the subject land under easement right. At this juncture, it is pertinent

to point out that either the petitioner or his vendor challenged the original

allotment of subject land to the Police Department, till date. The impugned

order of the fourth respondent is nothing but a direction for restoration of

Police Department is name in the Revenue Records and present Town

Survey Records, which had been erroneously removed from the records for

some years. However, based on the impugned order, the mutations have

been already effected and the Police Departments name was restored back

in the Revenue Records and therefore, the Writ Petition itself has now

become infructuous.



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19. Ninth respondent also submitted that the petitioner having purchased the alleged Patta lands without any right, title and interest from his vendor Mr.V.M.Chacko, with intention to grab the subject land and to settle his title disputes, has repeatedly approaching this Court by way of filing series of frivolous and vexatious Writ petitions, as adopted by his vendor Mr.V.M.Chacko and thereby wasting the valuable of this court and managed to enjoy the subject Government lands to their self-enrichments. But, the four decades of legal battle has ended by order dated 13.03.2018 passed by this court in W.P.3491 of 2018 filed by the petitioner, himself and ninth respondent had been impleaded as the fifth respondent in said proceedings and he permitted to place the actual facts before the Court and Writ petition got dismissed.

20. There is a Government Poromboke land classified as “Dry Assessed Waste land of an extent of 38 cents S.No. 320/2 in Padi Village, Ambattur Taluk, Chennai District, situated on the Southern side of the aforesaid communal land of villagers Comprised in S.No. 1177 of Korattur Village. In this, an extent of 14 Cents was allotted for the construction of Korattur Police Out-Post in the year 1976 by a Sub Division of S.No.320/2B of Padi Village and Registered as “Police



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Department” poramboke in the Village Accounts. The balance land of an

extent of 22 cents, was Sub-Divided as 320/2C and registered “Dry

Assessed waste” land kept under the custody of the Revenue Department.

The lands of an extent of 6 ½ cents in S.No.320/2B and 1 cent in

S.No.320/2C, was encroached by the aforesaid Thiru.V.M.Chacko in the

year 1980 while constructing a Shopping complex in his aforesaid allaged

Patta in S.No.1177/1A of Korattur Village, containing 8 shops of various

litigations. The Government, having come to know about the aforesaid

encroachment made by Mr.V.M.Chacko, locked and sealed the aforesaid

shopping Complex, before its inauguration and also initiated eviction

proceedings and the petitioner's vendor Mr.Chacko, managed to obtain

lease of the aforesaid encroached portion of an extent of 7 ½ cents, vide

G.O. (Ms) No.841, Revenue (D1) Department, dated 11.05.1988 for a

period of three years. But the said Mr.V.M.Chacko neither paid nor

renewed his lease on its expiry and thereafter sold a portion of the lease

land along with his alleged Patta lands to the petitioner through Registered

Sale Deed. The Government, having come to know about the aforesaid

illegal transaction caused the Tahsildar, Ambattur to lodge a Police

Complaint and a case has also been registered in the file of Korattur Police

Station as CC No.667/2004 Dated 12.10.2004 under various provisions of



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IPC and had also subsequently initiated eviction proceedings against

Mr.V.M.Chacko and aggrieved by the aforesaid eviction proceedings

Mr.V.M.Chacko and the petitioner had filed several writ petitions and all were dismissed.

21. Further, the petitioner made a fresh representation seeking lease of the aforesaid Government lands in his favour, claiming easementary right through the aforesaid subject land and Revenue land for his aforesaid alleged Patta lands. But, the aforesaid lease request of petitioner was rejected by the sixth respondent and subsequently, again eviction proceedings were initiated against the petitioner. Aggrieved by the aforesaid rejection of lease and eviction proceedings, petitioner filed series of Writ Petitions Nos. 17525 of 2009, 19516 of 2009 and 19813 of 2009 and the Court dismissed all the aforesaid petitions, vide common order dated 15.02.2010 and the petitioner by suppressing the aforesaid dismissal of the Court order dated 15.02.2010, once again made a fresh lease request to the Government. But, the Government has rightly rejected the aforesaid request of the petitioner, vide G.O. (Ms) No.54 Revenue (LD 2 (1) Department, dated 23.02.2017 as devoid of merits and ordered to resume back the aforesaid Government lands and to protect the same. The



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petitioner, aggrieved by the aforesaid lease rejection G.O., has come before this Court and earlier filed W.P.No.6199 of 2017 and it is pending. But, pending disposal of the aforesaid W.P.No.6199 of 2017, the petitioner submitted another representation to the Government seeking to grant the land under the exchange of land scheme, which is a sheer abuse of process of law. Thus, Mr.V.M.Chacko and the petitioner by adopting various dodging methods, managed to forestall eviction for all these years and had been illegally utilizing the aforesaid subject land along with Revenue land for their self-enrichments.

22. Ninth respondent stated that in Writ Appeal No. 1437 of 2007 filed by Mr.Chacko, the Division Bench of this Court, vide order dated 23.11.2007 dismissed the petition and observed that the alleged Patta land S.No. 1177/1 pt of Korattur Village, has its path way on the Eastern side for a width of 30 feet towards Shanthi Nagar and the claim of subject land by Mr.Chacko for access purpose for his aforesaid alleged Patta land in S.No.1177/1A was turned down. Further, it was also affirmed from the typed set of papers filed by the petitioner at Page No. 183, in the sketch of the alleged Town Survey Patta, the Eastern Side was mentioned as T.S.No.63, which is nothing but 30 feet Shanthi Nagar Road and the



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petitioner is currently using this road to reach his alleged Patta land and

carrying on business activities, without any hindrance. The petitioner has

approached this Court and filed the Writ Petition by suppressing various

material facts and sworn false affidavit, as if the land in S.No. 1177 of

Korattur Village is a Patta and the aforesaid Police land comprised in

S.No.320/2B is the only access to said alleged Patta land. Further, the

prayer of the petitioner and his vendor seeking permission to use the

subject land for access purposes has been already rejected by various

judgments of this Court and orders of the Government. If the petitioner

actually deserves any easement right to his alleged Patta land, that could

be decided only by the Civil court and not this Court under Article 226 of

the Constitution of India. The Division Bench of this Court vide order

dated 13.03.2018 in W.P.No.3491/2018, has also rejected the aforesaid

specific request of the petitioner. Therefore, the present petition is hit by

the principle of res-judicata and the writ petition is not maintainable and

after removal of the encroachments on the Police land and Revenue land as

per this Courts order Dated 13.03.2018, the subject land was protected by

fencing on 16.05.2019 in compliance of the orders passed by this Court in

W.A.No.2559 of 2018, dated 23.11.2018 and the aforesaid G.O. dated

23.02.2017 to prevent encroachments. The aforesaid similar direction was



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also issued by this Court in an order dated 24.04.2019 in Cont.Pet.

No.2061 of 2017 and at present, the petitioner, along with the tenant, has trespassed into subject land by mesh fence and cement post, damaging/removing and erected a portion of wire and mesh fence and cement post was also erected on the Police land on 25.09.2023 and they are now illegally utilizing the same for their business purpose. In this regard, the ninth respondent had lodged a written complaint with the seventh respondent and as no action was taken, the ninth respondent approached the Commissioner of Police, Avadi Commissionerate and lodged another complaint on 22.11.2023 and the seventh respondent was instructed to take action on the petition of the ninth respondent. Thus, the petitioner on one side has filed this present writ petition seeking for removal of fence put up on the subject land for free access to his shops and on other side, the petitioner himself indulged in the aforesaid illegal activities and utilizing the subject land for his business purpose by abuse of the process of law.

23. Further, it stated that the petitioner and his vendor Mr.Chacko are rank encroachers and they have not only cheated the Government but also this Court by filling repeated frivolous and vexatious



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Writ petition's to stay on the Government lands and enjoying the unlawful benefits for about 40 years. However, the similar prayer of this Writ petition for the subject land had been already dealt with by this Court in several Writ petitions and all were dismissed viz. W.A.No.1437 of 2007, W.P. 17525 of 2009, W.P.No.3491 of 2018 and W.A.No.2559 of 2018. However, the petitioner having been aware of all the above facts is repeatedly in line with earlier dodging methods and now filed this frivolous and vexatious Writ petition and other two Writ petitions viz. W.P.No.6199 of 2017 and W.P.No.5380 of 2018 before this court for the same relief, which is nothing but a smart attempt made by the petitioner to question the aforesaid earlier orders passed by this Court and the petitioner by suppressing the earlier rounds of litigations, has now filed this present writ petition before this Court for a legal sanction to grab the Police land by claiming easement any right for his self-enrichments. The petitioner has no indefeasible right to seek for any allotment of the subject land for commercial purpose, which admittedly belonged to the Government. Finally, it is submitted that, the present Writ petition involves disputed question of facts which are of civil nature and therefore, the Writ petition is not maintainable under Article 226 of the Constitution of India.

24. The learned counsel for the petitioner submitted that the



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Government's land comprised in Survey No. 320/2B, measuring an extent

of 6.5 cents and 320/2C, measuring an extent of 1 cents, situated at Padi

Village, Ambattur Taluk is existing adjoining to the Patta land of the

petitioner. The petitioner purchased the said Patta land from one private

person, thereby for the sake of convenience and to get right of easement,

the petitioner was constrained to use Government land as access to the

shop of the petitioner. The petitioner made an application to the third

respondent on 22.03.2012 seeking to grant leasehold right, as there was no

action on the earlier application, based on which, the third respondent

directed the fourth respondent to take necessary action on the application

of the petitioner and to send a report. The fourth respondent also

conducted an inspection with the Revenue Divisional Officer and

forwarded a detailed report with assessing land cost by recommending the

lease to the petitioner. The first respondent, without considering all the

recommendation made by their subordinates, dismissed the application of

the petitioner. Aggrieved by the same, the petitioner filed Writ Petition in

W.P.No. 6199 of 2017 before this Court and the same is pending. The

sixth respondent initiated eviction proceedings and the order was passed

directing the petitioner to evict from the Government land on the ground

that the subject matter of the land is required for widening Highways of



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Chennai to Thiruvallur High Road and the Fourth respondent also confirmed the said order vide its order dated 29.05.2018.

25. Aggrieved, by the same, the petitioner filed a Revision before the First respondent under Section 10A (1-c) of the Act and the petitioner also filed writ petition in W.P. No. 3491 of 2018, to direct to pass order on the Revision and to forbear the authority to evict the petitioners. The said Writ Petition was dismissed by this Court observing that the petitioner can make application for request of the authorities for grant of access to the shops and also hand over the vacant possession of the Government Land. The petitioner also made a representation on 19.01.2019 to the third respondent requesting to provide access for his shop enabling him to continue his business and the same is also pending for consideration. On 08.05.2019, the fourth respondent passed the order directing the sixth respondent to make entries in the Revenue Records to the effect that the above said Government Land belongs to the Police Department and the above said order is passed against their own records of the Department and without any materials, they have only, in order to forfeit the claim of the petitioner, had passed the impugned order, which is illegal and arbitrary. Further, the main contention of the learned Counsel for the petitioner is that the petitioner's Patta land is in between the



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Chennai to Thiruvallur Highways. The subject matter of land which belongs to the Government is existing. The petitioner in order to reach the shops from Chennai Thiruvallur Road had got any access through the subject land and for the convenience as well as the easement of necessity it has become absolute. They used the Patta land/shops of the petitioner. As the subject land has to be utilised, the petitioner has not been asking free of access or atleast they can give the land for lease. But however the official respondents purposely evading to give clearance and therefore the present writ petition is filed.

26. In support of his contentions, the learned counsel for the petitioner also relied upon the following judgements of the Hon'ble Supreme Court of India reported in **(1965) 2 SCR 242 : AIR 1965 SC 1147** in the case of ***Municipal Board, Manglaur Vs. Mahadeoji Maharaj***,

reported in **1996-2-L.W.35** in the case of ***The Commissioner, Panruti Municipality, Panrutii Vs. Sri Kannika parameswari Amman Temple***.

reported in **1996-2-L.W.35** in the case of ***The Commissioner, Panruti Municipality, Panruti Vs. Sri Kannika Parameswari Amman***



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reported in **2012-5-L.W.770** in the case of ***State of Tamil nadu***

& others Vs. D.Samiyathal.

reported in **99 L.W.182** in the case of ***Bharathamatha Desiya***

Sangam, Madhavaram & another Vs. Roja Sundaram & 2 others.

reported in **1958-2-All.L.R. 353** in the case of ***Govinda Asari***

Vs. Kancheepuram Municipal Council.

27. Learned Government Advocate appearing for the official respondents submitted that in the year 1976 itself, the land was allotted to the Police Department, but one way or the other with interference of the vendor of the petitioner there are long proceedings and the one way or other order of allotment of the Government land, the Police Department was not carried out in the Revenue Records and taking advantage of that the petitioner's vendor and the petitioner initiating several proceedings and however at last, they found that the Revenue Records were not carried out by the earlier order of 1976, dated 03.11.1976 and the fourth respondent has passed the order to carried out the necessary amendment. Further, the petitioner's vendor himself encroached the subject land and subsequently he got a lease and lease also expired and the petitioner's vendor did not



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even pay the lease amount or vacated the property. Therefore, the

proceedings for eviction were initiated and the petitioner knowing fully of the same, purchased the land with a litigation. He also enjoyed the land and even without making any payment to the Government and earlier, there was writ Petition filed by the third party and the petitioner also filed a writ petition and eviction proceedings were also initiated and an order was passed and right from the order by appropriate authority it attained finality of this Court. Neither the vendor of the petitioner nor the petitioner could succeeded it and now the petitioner has filed the present writ petition as the other round of litigation in the other way. Therefore, the petitioner is not entitled to get the relief and if at all the petitioner has got any easementary right, he has to work out is remedy in the manner known to law and the same cannot be dealt with by the Writ Court.

28. The ninth respondent who appeared in person submitted that the petitioner has got the access to his land an the Eastern side of the land and he has got access on the backside of his block. Even, the so-called shops also were only constructed in the Villages for public purpose, but, the vendors of the petitioner encroached that land and somehow they managed with the Revenue Department and got the Patta and therefore, Survey No. 1177 of Korattur Village is not a Patta land and however, even



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though they got the Patta now the Government also recognised their Patta

and the vendor is knowing fully that the subject land is Government land,

which was allotted to the Police Department, without leaving any space he

constructed the shopping complex and he has got access on the other side

of the land and therefore, he cannot ask the land for his use and as a

matter of right he is not entitled to any right of easement of necessity. If at

all he has no other way to reach his land it is for him to work out the same

in the manner known to law. When he lost all his request either from the

Revenue Department or from the Authority under the Land Encroachment

Act and also all the other remedy, and now he has filed the present writ

Petition which is not maintainable and the petitioner's vendor and the

petitioner are land grabbers and they have suppressed the entire facts and

also the earlier rounds of litigation and the Government Poramboke land is

classified as “Dry Assessed waste” land of an extent of 38 cents in

S.No.320/2 in Padi Village, Ambattur Taluk, Chennai District, situated on

the Southern side of the aforesaid commercial land of villages comprised

in Survey No.1177 of Korattur Village to an extent of 14 cents which was

allotted for the construction of Korattur Police out-post in the year 1976 by

a Sub-Division of S.No.320/2B of Padi village and registered as Police

Department Poramboke in the Village Accounts. The balance land of an



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extent of 22 cents was sub divided as S.No. 320/2C and registered “Dry Assessed Waste” land kept under the custody of the Revenue Department.

The lands of an extent of 6 ½ cents in S.No. 320/2B and 1 cent in S.No.320/2C was encroached by the vendor of the petitioner, V.M.Chacko in the year 1980, while constructing a shopping complex in his aforesaid alleged Patta in S.No. 1177/1A of Korattur Village, containing 8 shops with various litigations. The Government, having come to know about the aforesaid encroachment made by V.M.Chacko, locked and sealed the aforesaid shopping complex, before its inauguration and also initiated eviction proceedings. The petitioner's vendor Mr.V.M.Chacko had managed to obtain lease of the portion of an extent of 7 ½ cents on 11.05.1998 for a period of three years. The Vendor of the petitioner neither paid the lease amount nor renewed his lease on its expiry and thereafter, he sold a portion of the lease land along with the alleged Patta land to the petitioner through Registered Sale Deed. The Government having come to know about the aforesaid illegal transaction, caused the Tahsildar, Ambattur to lodge a Police complaint and a case was also registered on the file of Korattur Police Station in C.C.No.667/2004 dated 12.10.2004 under various provisions of IPC and subsequently eviction proceedings were initiated against the vendor of the writ petitioner and aggrieved by the



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aforsaid eviction proceedings, the vendor filed a several writ petitions and they were all dismissed. Knowing fully that the petitioner also purchased the land with the litigation he also filed a writ petition and also faced eviction petition and he lost all his rights. Now, the petitioner has not come to the Court with clean hands but with ulterior motive to grab the Government land, he has filed the petition. Therefore, this Writ Petition is liable to be dismissed.

29. Heard and perused the records. Admittedly the land in Survey No. 320/2B of an extent of 5 ½ cents and also Survey No. 320/2C of an extent of 1 cents, is Government land, which is adjacent to the petitioner's Patta land. In between the petitioner's shopping complex and the Chennai Thiruvallur road, the subject matter of land is existing and according to the petitioner, in order to reach shops from Chennai to Thiruvallur Road, the subject land is essential and for reaching their shop, there is no other way and therefore, for convenience and easement of necessity, the said land is required for him. Now, the respondents have acquired the land and put up the fence also and the petitioner is not able to use that shops which is abutting the subject land and therefore atleast five feets are required and they can remove the fencing and also to keep the



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minimum width of the land to reach the transport to use their shops for commercial purpose. But the fact remains that the petitioner purchased the land from one V.M.Chacko the vendor of the petitioner who encroached the land and subsequently he also entered into the lease for three years. But after three years, neither he extended nor renewed the lease period. However, he used the land without payment of rent. Therefore, he was named to be an encroacher and the eviction proceedings were initiated under the Tamil Nadu land Encroachment Act, right from the appropriate authority to this Court. He fought with that and lost his right and ultimately the Police Department has taken possession of the land. As far as the impugned order is concerned, accordingly to the authority, in 1976 itself, the subject land was allotted to the Police Department and to construct the Police Station out-post. However, from 1976, till the impugned order is passed the land was not mutated in the name of the Police Station and taking advantage of that, the vendor of the petitioner and subsequently vendor had created so many litigations and they had lost and therefore, now the land is mutated in the name of the Police Station as ordered in the year 1976.

30. One of the main contention of the Writ petitioner is that the reason for eviction is that the land was required for expanding the



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Highways road of Chennai to Thiruvallur. But whereas, now they have

stated that it was allotted to the Police station and therefore, Revenue

Records were mutated in the name of Police Station which is against the public policy and it is also arbitrary and therefore the impugned order has

to be set aside. On a perusal of the records, it is seen that the land was

already even in the year of 1976 itself, allotted to the Police Department to

construct a Police Station out-post. But however the mutation was not

effected and the objection was made. Even in the counter affidavit filed by

all the respondents, it is clearly stated that the District Collector,

Kancheepuram vide R.Dis. 122.428/76 1B dated 13.11.1976, allotted the

land to the Police Department on 23.11.1976 and therefore, now after

removal of encroachment and also the order of the Division Bench of this

Court dated 23.11.2018 and the petitioner was evicted from the place and

possession was taken over and the mutation also has been effected. Now,

the petitioner has not challenged the order dated 03.11.1976. He has only

challenged the impugned order said to have been passed by the fourth

respondent on 08.05.2019. One of the objections is that there is a proper

access to his shop through the Road on the Eastern side. Therefore, he

cannot claim the right of convenience or easement of necessity. The

petitioner encroached the land and unauthorisedly occupied the land.



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31. Now, as stated by the petitioner himself and also the respondents the land has been recovered from the petitioner and handed over to the Police Department. The mutation was also effected now by putting up the fence on a reading of the entire materials, it is clear that the petitioner has not come to the Court with clean hands and he has suppressed several material facts and also the petitioner had knowing fully, had purchased the property and further the petitioner has also alternative way to reach the shop and further, though the petitioner's counsel has stated that the petitioner has got every right of access from the main road to his Patta land. But, however if the private land is abutting to the street or public road, the person who has got the land abutting to the road has got right to access. Whereas, in this case the petitioner himself admitted that in between the Chennai Thiruvallur Road and his Patta land, namely the shop, there is the land comprising an extent of 6 ½ cents belongs to the Government which was allotted to the Police Department for constructing Police Station out-post way back 13.11.1976 itself. Therefore, the petitioner is not entitled to any access through the disputed land, if at all the petitioner has no other way and he is entitled for the



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easement of necessity for which he has to prove severance of tenaments

and no other alternative way to reach his shops. For which, the petitioner

has to approach the Competent Civil forum and work out his remedy in the manner known to law and not by way of writ petition for easement of necessity for reaching the land. It requires pleading and oral and documentary evidence and only based on that, the Court can arrive at a conclusion. Whether the petitioner is entitled for any right of easement of necessity or not, the Writ Court cannot decide the same and therefore, while exercising the extraordinary jurisdiction under Article 226 of the constitution. On a perusal of the entire records, this court finds that the petitioner has not approached the Court with clean hands as he had suppressed the material facts and he also tried earlier round of litigations and he lost it. Even his vendor also earlier tried and he failed to achieve his goal. Now, the petitioner has filed the present writ petition. As far as the utilisation of the disputed land is concerned as already the respondents have clearly stated that in the year 1976 itself, the land was allotted to the Police department and so far, the petitioner has not challenged the same. Based on the same, through the impugned order, the mutation has also been effected and therefore the petitioner is not entitled to the relief as sought for in this writ petition.



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32. The Citations referred to by the learned counsel for the petitioner are not applicable to the present case on hand and the facts and circumstances of those cases are distinguishable to the facts and circumstances of the present case on hand.

33. Therefore, for all the reasons stated above, this Writ petition is dismissed and consequently connected miscellaneous petition is closed.

No costs.

22.12.2023

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Index:Yes/No

Speaking Order : Yes/No

Neutral Case Citation: Yes/No



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To

1. The Secretary to the Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai – 600 009.
2. The Secretary to the Government of Tamilnadu,
Home Department,
Fort St. George, Chennai – 600 009.
3. The Commissioner,
Land Administration Department,
Ezhilagam, Chennai -600 005.
4. The District Collector,
Chennai District,
Singaravelar Maaligai,
Rajaji Salai, Chennai - 600 001.
5. The Joint Commissioner of Police,
West Zone,
Ambattur, Chennai - 600 053.
6. The Tahsildhar,
Ambattur Taluk,
Ambattur, Chennai – 600 053.
7. The Inspector of Police,
T3, Korattur Police Station,
Chennai – 600 080.



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P. VELMURUGAN, J.

nsI

**Pre-Delivery order
W.P.No. 15021 of 2019
and
W.M.P.No. 14986 of 2019**

Order pronounced on 22.12.2023