IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM :

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.23449 of 2024

K.Shanbagavalli .. Petitioner

Vs

1.The Revenue Divisional Officer,
Chennai Central Division,
Off Thirumangalam Junction,
Chennai-600 101.

2.The Tashildar,
Ambattur Taluk Office,
Chennai-Tiruvallur High Road,
Gandhi Nagar, Ambattur,
Chennai-600 053.

3.The Divisional Engineer,
Highways (C&M) City Road,
No.394/4, Anna Salai,
Chennai-600 006.

4.The Assistant Divisional Engineer,
Highways (C&M),
Chennai City Roads Sub Division,
Chennai-600 015.

5.Indian Oil Corporation Limited,
A Government of India Undertaking,
Having its registered office at
No.G-9, Ali Yuvar Jung Marg,
Bandra, Mumbai-600 051.

6.Indian Oil Corporation Limited,
A Government of India Undertaking,
Having its Chennai Divisional Office at
No.500, Anna Salai, Teynampet,
Chennai-600 018.

7.The District Revenue Officer,
Chennai District,
Singaravelar Maligai,
Beach Road, Chennai. .. Respondents

(Respondent No.7 impleaded as per this order)

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to the proceedings of the fourth respondent bearing No.Se.Mu.Ka.No.286/2010/E.Ni.Va dated 5.8.2024 and quash the same and consequently forbear the respondents not to in any manner evict the petitioner from the property bearing Old Survey No.151/1A1A1C1A2, New Town Survey No.169, Ward No.1, Block No.31, Korattur Village, Ambattur Taluk, Chennai District.

For the Petitioner : Mr.T.T.Ravichandran
for M/s.Sharukumar S.I.

For the Respondents : Mr.A.Edwin Prabakar
State Government Pleader
for respondents 1 to 4 and 7

ORDER
(Order of the Court was made
by the Hon'ble Acting Chief Justice)

Seeking quashment of the order of the fourth respondent dated 5.8.2024 calling upon the petitioner to remove the encroachment and to vacate the premises in Old Survey No.151/1A1A1C1A2, New Town Survey No.169, Ward No.1, Block No.31, Korattur Village, Ambattur Taluk, Chennai District and a consequential direction to forbear the respondents from in any manner evicting the petitioner from the said property, the petitioner has filed the present writ petition.

2. Learned counsel for the petitioner submitted that the property in question, namely three plots in New Survey No.151/1A1A1C1A2 part measuring about 9249 square feet, was purchased by the petitioner and her husband. On 21.1.2004, a lease deed was entered into between the petitioner and the Indian Oil Corporation Limited for setting up a retail outlet. While so, the impugned order has been issued to the petitioner, as if the petitioner had encroached upon the subject-property.

3. Learned counsel further submitted that earlier the petitioner had filed W.P.No.24793 of 2008 alleging that no enquiry in respect of the disputed land was conducted and, this Court, vide order dated 2.4.2009, remitted the matter to the authority to hold a proper enquiry, consider the documents filed by the petitioner and thereafter give a specific finding as to whether the disputed land belongs to the Highways Department. He would submit that one Gandhimathi Ramarao had filed W.P.No.6350 of 2020 and, this Court, vide order dated 4.10.2023, disposed of the said writ petition recording the status report filed by the third respondent therein. Aggrieved by the said order, the petitioner had filed S.L.P.No.24233 of 2023 before the Apex Court and the Apex Court, vide order dated 7.11.2023, granted liberty to the petitioner to invoke the review jurisdiction before the High Court. Pursuant to the liberty granted by the Apex Court, the petitioner had field the review application. By the order dated 18.12.2023, Review Application (Writ) No.213 of 2023 and W.P.No.33959 of 2023 were disposed of by this Court by recording that notice dated 30.10.2023 was issued to the petitioner and respondents 6 and 7 in W.P.No.33959 of 2023. Thereafter, on 2.1.2024, the petitioner had submitted a reply to the fourth

respondent enclosing the documents. On 8.1.2024, the first respondent issued another notice to the petitioner directing the petitioner to give a fresh reply on or before 11.1.2024.

4. Learned counsel for the petitioner next submitted that the petitioner has also filed W.P.No.2809 of 2024 seeking mandamus directing the respondents therein to furnish documents for the purpose of giving additional reply to the show cause dated 30.10.2023 issued to her. The said writ petition was disposed of by this Court vide order dated 8.2.2024 observing that already an opportunity to file reply and place on record the stand of the petitioner was granted and it is for the petitioner to place whatever the materials she chooses to. The petitioner has also brought to the notice of the first respondent the said order dated 8.2.2024 passed in W.P.No.2809 of 2024. While so, on 27.2.2024, the fourth respondent passed an order stating as if the patta issued in favour of the petitioner has been cancelled by an order dated 19.2.2024. As against the order dated 27.2.2024 issued by the fourth respondent, the petitioner had filed an appeal before the District Collector/District Revenue Officer. The petitioner had also filed W.P.No.6399 of 2024

challenging the order passed by the fourth respondent and the said writ petition along with other writ petitions were disposed of by the order dated 5.7.2024 by a Division Bench of this Court. While so, without following the procedure contemplated under law and without providing an opportunity of hearing, the impugned order dated 5.8.2024 is passed and the same is liable to be set aside.

5. Adding further and by placing on record the additional typed set of papers, learned counsel for the petitioner submitted that as against the order passed by the Revenue Divisional Officer cancelling the patta, the petitioner had filed a revision petition before the District Revenue Officer, Chennai District on 1.3.2024 and the said revision petition is still pending. Since the revision petition of petitioner is pending before the District Revenue Officer, the issuance of the impugned order dated 5.8.2024 by the fourth respondent herein asking the petitioner to vacate from the property in question is illegal.

6. It is also the submission of learned counsel for the petitioner that before issuing the impugned order no opportunity of hearing was

given to the petitioner and further no reason has been assigned in the impugned order. That apart, no personal inspection and/or survey of the property in question was done by the fourth respondent before issuing the impugned order.

7. Learned State Government Pleader appearing for the official respondents submitted that after conducting enquiry and giving opportunity to all the parties, the Revenue Divisional Officer, Chennai Central Division, cancelled the pattas wrongly issued by the Tahsildar, Ambathur and directed to register the lands in the name of the Highways Department. He would submit that pursuant to the order passed by the Division Bench of this Court in W.P.Nos.6337, 6399, 9094 and 12126 of 2024 and upon a joint inspection carried out by the Tahsildar, Ambattur and the other revenue officials and upon confirming the encroachment made on the Highways land by the petitioner, the impugned order came to be issued by the fourth respondent calling upon the petitioner to vacate the premises.

8. We have considered the rival submissions and also perused the materials available on record.

9. In the earlier writ petitions, being W.P.Nos.6337, 6399, 9094 and 12126 of 2024, initiated by the petitioner, Indian Oil Corporation Limited and the adjoining land owners, the Division Bench of this Court, while quashing the orders impugned therein, directed the Assistant Divisional Engineer, Highways, Chennai to construe the earlier proceedings dated 30.10.2023 as show cause notices and consider the replies of the petitioners therein, more particularly, the petitioner herein and pass a fresh order.

10. The specific argument of learned counsel for the petitioner is that despite the direction given in W.P.No.6337 of 2024 etc. batch, the respondent authorities have not surveyed the property and without following the procedure as established under the Highways Act, 2001, the impugned order came to be issued, as if the title of the property in question vests with the Highways Department.

11. According to the petitioner, as against the cancellation of patta issued in favour of the petitioner in respect of the land in question, a revision petition has been preferred before the District

Revenue Officer and the same is still pending.

12. It is also the submission of learned counsel for the petitioner that the extent of encroachment can be determined only if the provisions of the Tamil Nadu Highways Act, 2001 are given effect to and implemented in true letter and spirit. The Highways Authority is mandated under Section 8(1) of the Act to publish the highway boundary, building or control line construction or that development is proposed to be undertaken. Further, a notification is liable to be published by the Highways Department. However, prima facie, in the case on hand, without following the said provision or determining the boundary by fixing the highway boundary line, the Highways authority could not have straightaway come to a conclusion that the petitioner encroached the lands belonging to the Government.

13. It is not in dispute that the factum of filing revision petition by the petitioner against the order dated 19.2.2024 has been brought to the notice of the fourth respondent. However, the same has not been considered by the fourth respondent while passing the impugned order dated 5.8.2024.

14. On a perusal of the impugned order, this Court is unable to see the consideration of the objections filed by the petitioner and the documents produced by her. Further, there is no whisper as to the grant of opportunity to the petitioner before issuing the impugned order.

15. It is the admitted case that Indian Oil Corporation is in possession of the property in question and the Indian Oil Corporation has put up a petrol filling station and without hearing the lessee, who has vital interest in the property, the impugned order has been passed. In the absence of any proof showing that the impugned order has been passed after providing opportunity and upon considering the documents produced by the petitioner, we find no hesitation to set aside the impugned order passed by the fourth respondent and remit the matter to the fourth respondent for passing an order afresh.

16. Since the revision petition filed by the petitioner is pending consideration before the District Revenue Officer, in the interest of

justice, it would be appropriate to direct the said authority to first consider the revision petition and pass orders within the stipulated time. As the District Revenue Officer is not arrayed as party respondent in the present writ petition, we suo-motu implead the District Revenue Officer, Chennai District, as respondent No.7 for proper adjudication. Learned State Government Pleader, accepts notice on behalf of respondent No.7. The Registry is directed to carryout necessary amendment in the writ petition.

17. In view of the above, we pass the following orders:

(i) The District Revenue Officer, Chennai District, is directed to consider and dispose of the revision petition filed by the petitioner, on merits and in accordance with law, as early as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order.

(ii) The impugned order dated 5.8.2024 issued by the fourth respondent is set aside and the matter is remitted to the said authority for passing a fresh order on merits and in accordance with law and in the light of the order to be passed by the District Revenue Officer, Chennai District in the revision petition filed by the petitioner, within a period of six weeks thereafter.

18. With the above observations and directions, the writ petition is disposed of. There shall be no order as to costs. Consequently, W.M.P.Nos.25618, 25619 and 25620 of 2024 are closed.

(D.K.K., ACJ.) (P.B.B, J.)
13.08.2024

Index : Yes/No
NC : Yes/No
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THE HON'BLE ACTING CHIEF JUSTICE
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P.B.BALAJI, J.

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