



W.P.No.23714 of 2024

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

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S.Suresh

.. 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-600 009.
- 4.The Assistant Divisional Engineer,
Highways (C&M),
Chennai City Roads Sub Division,
Chennai-600 015.



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5.The District Revenue Officer,
Chennai District,
Singaravelar Maligai,
Beach Road, Chennai.

.. Respondents

(Respondent No.5 impleaded as per this order)

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records relating to the order passed by the fourth respondent dated 5.8.2024 Proceedings Letter Number 286/2010/Assistant, quash the same.

For the Petitioner : Mr.M.Baskar

For the Respondents : Mr.M.Habeeb Rahman
Government Advocate

ORDER

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

Challenging the order of the fourth respondent dated 5.8.2024 calling upon the petitioner to remove the encroachment made in Old Survey No.151/1A1A1C1A2, New Town Survey No.163/11, Ward No.1, Block No.31, Korattur Village, Ambattur Taluk, Chennai District, the petitioner has filed the present writ petition.



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2. The case of the petitioner is that the petitioner is the owner of plots of land situated in Venkatesa Thiyagaraya Nagar at Kolathur Village, Ambattur Taluk in Block No.63/2 and the same were purchased by him in the year 2004. The land was originally in Survey No.151/1, which was later on sub-divided into Survey Nos.151/1A1A1C1A3 and 151/1A1A1C1A4 and the petitioner is in peaceful occupation of the said property for the past 20 years. While so, by the proceedings of the first respondent dated 19.2.2024, the patta standing in the name of land owner was cancelled on the basis that the said land was acquired by the Government. Thereafter, the fourth respondent passed the impugned order alleging as if the petitioner has encroached on the land belonging to the Highways Department and directing the petitioner to vacate the premises. Challenging the impugned order dated 5.8.2024, the present petition has been filed.

3. Learned counsel for the petitioner, *inter alia*, submitted that the proceedings referred to in the impugned order was with respect to the enquiry conducted by the first respondent wherein the petitioner was not afforded an opportunity and the said proceedings



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are purely illusory in nature. The impugned order of the fourth respondent is an arbitrary exercise of power without due consideration of the facts. The fourth respondent, without adherence to the directions issued by this Court in W.P.No.12126 of 2024, has mechanically passed the impugned order dated 5.8.2024.

4. Adding further, learned counsel for the petitioner submitted that the order passed by the first respondent cancelling the patta issued in favour of the petitioner has not attained finality and, in fact, the first respondent has not allowed the petitioner to file the documents, which is a right available to the petitioner and even otherwise, which is subject to appeal before the District Collector/District Revenue Officer. Before the time limit for filing the appeal/revision had expired, the fourth respondent passed the impugned order. The petitioner is in continuous possession and enjoyment of the subject-property by running business without any interruption right from the date of purchase of the property. Therefore, the impugned order suffers from arbitrariness and the same is liable to be quashed.



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5. During the course of arguments learned counsel for the petitioner, by placing on record the additional typed-set of papers, contended that the petitioner has filed a revision petition before the District Revenue Officer, Chennai District as against the order dated 19.2.2024 and the same is pending consideration by the said authority and suitable direction may be issued to the District Revenue Officer to dispose of the revision petition.

6. Learned Government Advocate appearing for the respondents submitted that after conducting an enquiry and by providing opportunities to the petitioner, the Revenue Divisional Officer, Chennai Central Division cancelled the patta wrongly issued by the Tahsildar, Ambathur and directed to register the land 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.



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

8. 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, a 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, consider the replies of the petitioners therein, more particularly, the petitioner herein and pass a fresh order.

9. It is the submission of learned counsel for the petitioner that 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. It is not in dispute that the factum of filing revision petition has been brought to the notice of the fourth respondent. However, the same has not been considered by the fourth respondent while



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passing the impugned order dated 5.8.2024.

10. The specific case of the petitioner is that without affording opportunity to the petitioner and before the expiry of the time limit for filing appeal/revision against the order dated 19.2.2024, the fourth respondent passed the impugned order, that too, without following the procedure as established under the Highways Act, 2001.

11. On a perusal of the impugned order, it is seen that there is no whisper as to the consideration of the objections filed by the petitioner and the documents produced by him. Further, there is no indication in the impugned order as to the opportunity granted to the petitioner before passing the impugned order. It is the admitted case that the petitioner who is running a marble shop is in possession of the subject-property. There is no dispute that as against the order dated 19.2.2024 passed by the first respondent, a revision petition has been filed by the petitioner before the District Revenue Officer and the same is pending. The fourth respondent ought to have waited for the outcome in the revision petition filed by the petitioner. In view of the above, we have no hesitation in setting aside the



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impugned order passed by the fourth respondent and remitting the matter to the fourth respondent for passing a fresh order.

12. 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.5 for proper adjudication. Learned State Government Pleader, accepts notice on behalf of respondent No.5. The Registry is directed to carryout necessary amendment in the writ petition.

13. It is pertinent to note that a similar challenge was made by one K.Shanbagavalli, Proprietrix of M/s.Sri Ragavendra Filling Station in W.P.No.23449 of 2024, wherein this Court, vide a separate order, quashed the order of the fourth respondent dated 5.8.2024 and directed the District Revenue Officer, Chennai District to consider the revision petition first.



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14. 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. Such orders shall be passed by the fourth respondent within a period of six weeks thereafter.

With the above observations and directions, the writ petition is



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disposed of. There shall be no order as to costs. Consequently,
W.M.P.Nos.25949 and 25951 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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