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W.P.No.33217 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.33217 of 2024

and

W.M.P.No.35998 of 2024

in

W.P.No.33217 of 2024

N.Mohamed Yusuf
S/o.T.A.S.Nazeer

... Petitioner

Vs.

1. The District Collector
Chennai District
Chennai-600 001.
2. The District Revenue Officer
Chennai District.
3. The Revenue Divisional Officer
Chennai Central Zone
Chennai-600 101.
4. The Tahsildar
Ambattur Taluk, Ambattur
Chennai-600 053.
5. The Assistant Divisional Engineer

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Highway (C&M)
Chennai City Roads Sub Division
Chennai-600 015.

... Respondents

Prayer :

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the 5th respondent in செ.மு.க.எண்.286/2010/இநிவ dated 05.08.2024 and quash the same.

For Petitioner : Mr.K.V.Sajeevkumar
For Respondents : Mr.V.Ravi
Special Government Pleader

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition is filed by the writ petitioner challenging an order dated 05.08.2024 passed by Assistant Divisional Engineer bearing reference Se.Mu.Ka.No.286/2010/E.Ni.Va, wherein the writ petitioner was directed to vacate the premises, failing which, the encroachment will be removed by the respondents.

2. This is the second round of litigation in this Court.



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3. The case of the petitioner is that he has purchased 'property comprised in Door No.36 (Old No.30) Sastha Nagar (Venkatesa Thyagaraya Nagar), comprised in S.No.144/2 in Patta No.666, 200 Feet National Highway Road, Korattur Village, Ambattur Taluk, Tiruvallur District' [hereinafter 'said property' for the sake of brevity, convenience and clarity] from one Uma, wife of Paramasivam on 13.09.2011 vide sale deed bearing document No.3753/2011 dated 13.09.2011. The writ petitioner had been served with a “summon” dated 18.08.2023, wherein the third respondent directed the writ petitioner to appear along with documents of the said properties to conduct enquiry for cancellation of patta, already issued in favour of petitioner. Accordingly, on 24.08.2023 the writ petitioner appeared before the third respondent and submitted his written submissions. After enquiry, the patta issued in favour of writ petitioner pertaining to said property was cancelled vide order dated 19.02.2024. Consequently, the fifth respondent passed an order dated 29.02.2024, directing the writ petitioner to remove the encroachment in the said property. This was challenged in W.P.No.9094 of 2024 before this Court and after considering the submissions and hearing parties, the order dated 29.02.2024 was set



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aside and the fifth respondent was directed to consider the matter afresh based on the reply submitted by the writ petitioner. The operative portion of the order dated 05.07.2024 in W.P.No.9094 of 2024 reads as follows:

*'6. In the light of the submissions made by aforementioned all learned counsel made in unison and in the light of **Suman's** case, the following order is made:*

(i) Impugned proceedings dated 29.02.2024 bearing reference Letter No.286/2010/Assist in 4 captioned WPs and also the impugned proceedings dated 06.03.2024 issued to the writ petitioner in W.P.No.6337 of 2024 are set aside primarily on the ground that 'Show Cause Notice' {'SCN'} and response aspect of Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'Highways Act' for the sake of brevity} have not been complied;

(ii) The Assistant Divisional Engineer, Highways, Chennai, shall now construe earlier proceedings dated 30.10.2023 issued to writ petitioners in W.P.Nos.6399, 9094 & 12126 of 2024 as SCNs, consider writ petitioners' replies and also consider the reply of writ petitioner in W.P.No.6337 of 2024 and make orders afresh;

(iii) Though obvious, we make it clear that we have not expressed any view or opinion on the merits of the matter and therefore the Assistant Divisional Engineer, Highways, Chennai, shall now decide the matter afresh untrammelled by any observations made in this common order;



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(iv) Aforementioned exercise shall be completed by the Assistant Divisional Engineer, Highways, Chennai, as expeditiously as the business of the Assistant Divisional Engineer would permit but in any event within four weeks from today ie., by 02.08.2024;

(v) Proceedings of the Assistant Divisional Engineer, Highways, Chennai, shall be communicated to the writ petitioners under due acknowledgment within three working days from the date of the proceedings;

(vi) Further proceedings will obviously be pursuant to / subject to / depending on the de novo proceedings to be made.'

4. Based on the directions issued above, fifth respondent has passed an order dated 05.08.2024 which is impugned herein.

5. Mr.K.V.Sajeev Kumar, learned counsel for writ petitioner submitted that without considering the representation of the writ petitioner and solely relying on the order of the Respondent No.3 and without properly complying the previous order of this Court in W.P.No.9094 of 2024 dated 05.07.2024, impugned order is passed under Section 28(2) of said Act and hence, the impugned order is not sustainable and the same is liable to be quashed.



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WEB COPY 6. Issue notice to the respondents.

7. Mr.V.Ravi, learned Special Government Pleader accepts notice for respondents.

8. The learned Special Government Pleader submitted that a joint inspection was conducted in the presence of writ petitioner herein and it was found that said property is in the acquired portion of Highways and thereby, it is treated as encroachment and a final order has been passed, hence, there is no infirmity in the impugned order passed by the fifth respondent.

9. This Court, by an order dated 05.07.2024 has directed the Assistant Divisional Engineer, Highways Department to consider the writ petitioner's reply and also directed him to decide the matter fresh untrammelled by any observations made by this Court.



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10. On going through the impugned order, it is seen that the fifth respondent has passed the impugned order under Section 28(2) of said Act and in penultimate paragraph, he has stated that a joint inspection was conducted in the presence of writ petitioner and during the inspection, it was found that said property purchased by the writ petitioner is acquired land and he has also relied on an order passed by the Revenue Divisional Officer Respondent No.3 dated 19.02.2024. In the order passed by the Revenue Divisional Officer dated 19.02.2024, it was held that entire land in S.No.144/2 to an extent of 1.45 acres was acquired under the Land Acquisition Act by the Government for laying Highways in Korattur Village and an award was also passed vide Award dated 07.01.1987 in Award No.01/87. The classification of the said property is 'சர்க்கார் புறம்போக்கு'. In the order it is observed that erstwhile land owners of some portions of land, covered under the very same survey number had also appeared for enquiry. After considering the claims of various land owners, the Revenue Divisional Officer Respondent No.3 has cancelled the patta issued in their favour and directed the authorities to record the same in the Adangal as 'சர்க்கார் புறம்போக்கு - Highways Department'.



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11. In the representation of the writ petitioner, he claims that said property was not acquired since the said property is situate in Block No.32, not in Block No.31 whereas in the order of Revenue Divisional Officer dated 19.02.2024, it is stated that entire extent of land in Survey No.144/2 of Korattur Village was acquired and award has already been passed. The impugned order made by the fifth respondent has categorically stated that there was a joint inspection conducted and after joint inspection, it was found that said property was acquired for the purpose of laying Highways and the writ petitioner has purchased the said property already acquired. Based on this, the fifth respondent passed the impugned order.

12. As discussed above, patta granted in favour of writ petitioner was cancelled and a joint inspection was also conducted and representation of the writ petitioner was also taken into account by the fifth respondent while passing the impugned order. We are of the view that the impugned order



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has been passed after affording sufficient opportunities to the writ petitioner herein and we find no reason to interfere with the impugned order.

13. Accordingly, Writ Petition fails and the same is dismissed. Consequently, connected Writ Miscellaneous Petition is closed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

14.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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M.SUNDAR, J.,

and

K.RAJASEKAR, J.,

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To

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Chennai District
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