



WEB COPY

W.P.No.13958 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2025

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.P.No.13958 of 2024

R.Pandian

.. Petitioner

v.

1. The Secretary
Department of Revenue and Disaster Management
Government of Tamil Nadu
Fort St.George, Chennai 600 009
2. The Executive Engineer, Zone X
Greater Chennai Corporation
No.117, N.S.K.Salai
Kodambakkam, Chennai 600 024
3. The Settlement Officer
Office of the Settlement and Survey
Chepauk, Chennai 600 005
4. The Member Secretary
CMDA, Gandhi Irwin Road
Chennai 600 008



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5. The Tahsildar

Aminjikarai, Chennai

(R5 suo motu impleaded as per order

dt. 29.07.2024 in WP.13958/24)

..

Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent to consider the representation dated 13.05.2024 of the petitioner in accordance with law to hold enquiry into the matter and declare the land and shop No.6, West Natesan Nagar, 2nd Main Road, Virugambakkam, Chennai 600 092 as Grama Natham and permit the petitioner to run his business in his residence.

For Petitioner :: Mr.R.Sankarasubbu

For Respondents :: Mr.Vadivelu Deenadayalan
Additional Government Pleader
for R1, R3 & R5
Mr.R.Ramanlaal
Additional Advocate General assisted
by Mr.D.B.R.Prabhu
Standing Counsel for R2
Mr.R.Sivakumar
Standing Counsel for R4

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The writ of mandamus has been instituted to direct the first respondent to consider the representation dated 13.05.2024 of the petitioner in accordance with law, to hold enquiry into the matter and declare the land



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and shop No.6, West Natesan Nagar, 2nd Main Road, Virugambakkam, Chennai 600 092 as Grama Natham and permit the petitioner to run his business in his residence.

2. Mr.R.Sankarasubbu, learned counsel for the petitioner would mainly contend that the father of the writ petitioner was in occupation of the subject premises and after his death, the petitioner has continued to be in occupation. Since they are living for several decades, they are entitled to possess the said property. The authorities have not followed the due procedures and during the pendency of the appeal, the building constructed by the petitioner was demolished. The land has been classified as 'Grama Natham' in revenue records and patta was granted in the name of the father of the writ petitioner. Ownership certificate was issued by the Revenue Inspector and the petitioner is paying property tax and other necessary charges. Therefore the petitioner is to be declared as owner of the property and he must be allowed to continue in possession of the property.

3. Mr.R.Ramanlal, learned Additional Advocate General assisted by



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Mr.D.B.R.Prabhu, learned standing counsel for the Greater Chennai Corporation would oppose by stating that the patta and ownership certificate issued in favour of the father of the writ petitioner was found to be bogus by the authorities. The father of the petitioner as well as the petitioner are encroachers of public road and pursuant to the directions issued by the Division Bench of this Court, the encroachment was removed and the building constructed on the road was demolished. Road is to be maintained by the Corporation for public usage. Since the petitioner's father created some bogus records, the authorities, after conducting an enquiry by affording opportunity to the petitioner, passed final orders and thereafter removed the encroachment.

4. The learned counsel for petitioner Mr.Sankarasubbu would submit that the building was demolished during the period when the Election Model Code of Conduct was in force, which is in violation of the Election Commission Rules.

5. In this context, the learned Additional Advocate General would



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reply by stating that the demolition was carried out pursuant to the orders of the Division Bench and as far as the Court orders, they can be implemented even during the Model Code of Conduct is in force.

6. Be that as it may, this Court perused the pleadings and the records. Admittedly, the subject property is falling within the territorial jurisdiction of Greater Chennai Corporation. Virugambakkam is now a prime locality in Chennai city. The classification if at all originally made as Grama Natham, the same cannot continue after urbanisation and development of Greater Chennai Corporation. There was a ban during the relevant period of time and the people cannot be allowed to encroach upon the urban lands under the guise of 'Grama Natham', in the absence of assignment, which is to be made by the Government by following the Revenue Standing Orders. The petitioner has not produced any document to establish that he is an assignee by the Government under the Revenue Standing Orders.

7. The petitioner was identified as an encroacher long back by the Greater Chennai Corporation and a notice was issued to the petitioner by the



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Corporation on 09.08.2018 under Section 220 read with Section 222 of the Chennai City Municipal Corporation Act, 1919. The petitioner challenged the said notice in W.P.No.22081 of 2018. The Division Bench of this Court passed final orders on 30.08.2018, as follows:-

“12. It cannot be gainsaid that the 2nd Respondent shall provide an opportunity of personal hearing, if he Petitioner so desires, of course, by adhering to the 'Principles of Natural Justice'. The 2nd Respondent is directed to pass a reasoned speaking order based on the representation / objections of the Petitioner in a just, free, unbiased and in a dispassionate manner, especially, untrammelled and uninfluenced with any of the observations made by this Court in this Writ Petition. Till the final orders are passed in the subject matter in issue by the 2nd Respondent, the possession of the Petitioner from the subject property shall not be disturbed.”

8. Subsequent to the above judgment, the petitioner again submitted a representation on 10.10.2018. The said representation was considered by the competent authority of Greater Chennai Corporation and a speaking



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order was passed in proceeding dated 07.11.2018. All the grounds raised by the petitioner were adjudicated and the documents submitted by him were also scrutinized by the competent authority. The order passed by the Corporation reveals that the father of the petitioner and the petitioner are encroachers of the public road and they have constructed a residential house with commercial establishment. By the said order, the Corporation had granted time to the petitioner to remove the encroachment, failing which the Corporation would remove the encroachers. Even after passing of the order by the competent authority in proceeding dated 07.11.2018, the petitioner has made further representation to the authorities. Once again the petitioner filed the second writ petition in W.P.No.30357 of 2018 challenging the final order of the Corporation dated 07.11.2018. However, the Division Bench adjudicated the issues on merits and finally dismissed the writ petition by order dated 02.02.2024. The Division Bench directed that the encroachment made by the petitioner would have to be removed within a period of 15 days from the date of receipt of a copy of the order and the authorities shall take the assistance of Police for removal of encroachment, if required. Pursuant to the judgment of the Division Bench once again on merits, the authorities



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have demolished the building and removed the encroachment for the purpose of maintaining the road for public usage. Not stopping with that order, the petitioner has again submitted a representation on 13.05.2024 to the Government. Based on the said representation, the present writ petition has been instituted.

9. The writ petition on hand per se is not entertainable, in view of the fact that the issues were adjudicated twice by the Division Benches of this Court and orders of eviction were passed, which came to be implemented by the Greater Chennai Corporation by removing the encroachments. At this juncture, Mr.Sankarasubbu, learned counsel for petitioner would rely on the judgment of the Hon'ble Supreme Court of India in *Re: Directions in the matter of demolition of structures* reported in 2024 SCC OnLine SC 3291. He drew the attention of this Court to the directions issued by the Hon'ble Supreme Court not to demolish the buildings through bulldozers. Therefore, the demolition already made by the Corporation is illegal and in violation of the directions issued by the Supreme Court in the said case.



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10. Pertinently, the background of the said case was to raise the grievance on behalf of various citizens whose residential and commercial properties have been demolished by the State machinery without following the due process of law, on the ground of them being involved as accused in criminal offences. Therefore, the Supreme Court adjudicated the issues with reference to the issue of demolition of buildings of the persons involved as accused in criminal offences. Directions have been issued in paragraph-90 of the judgment titled-IX.Directions. Paragraph-90 of the judgment states that in order to allay the fears in the minds of the citizens with regard to arbitrary exercise of power by the officers/officials of the State, we find it necessary to issue certain directions in exercise of our power under Article 142 of the Constitution. Therefore, the said order has been passed invoking the powers under Article 142 of the Constitution of India.

11. Paragraph-91 of the judgment in unequivocal terms reiterates that “At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to



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cases where there is an order for demolition made by a Court of law.”

Further the procedures are contemplated for removal of encroachments and demolition of unauthorized buildings. Therefore the reliance placed on behalf of the petitioner is misplaced. In the present case, notice was issued in the year 2018 itself. The petitioner filed two writ petitions and the final order passed by the Corporation authorities was also the subject matter of challenge in one of the writ petitions, and the Division Bench of this Court rejected the case of the petitioner and issued a direction to remove the encroachments. Therefore the judgment of the Hon'ble Supreme Court is of no avail to the petitioner.

12. The conduct of the encroachers by filing repeated writ petitions in order to escape from eviction cannot be approved by this Court, as all the encroachments in public places are to be removed by following the due process. The learned counsel for petitioner would submit that other encroachers are also there and no action has been taken. The Greater Chennai Corporation or the revenue authorities have to initiate all appropriate actions to identify the encroachments and remove the same by



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following the due process of law, as public lands are to be utilized for the benefit of the public.

13. The writ petitioner has unnecessarily filed the present writ petition even after dismissal of his earlier writ petition challenging the final order passed and thus the present writ petition is to be declared as a vexatious litigation and consequently, the writ petition stands dismissed with costs of Rs.5,000/- (rupees five thousand only) to be paid by the petitioner to the High Court Legal Services Committee, on or before 25.02.2025. Consequently, W.M.P.No.15158 of 2024 is also dismissed.

Index : yes

(S.M.S.,J.) (K.R.S.,J.)

Neutral citation : yes

14.02.2025

SS

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