



C.R.P.(PD)No.4958 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4958 of 2024
and C.M.P.No.27918 of 2024

R.Bakthavatchalam

.. Petitioner

Vs.

1. The District Collector,
Kancheepuram, having office at
Kancheepuram District.

2.The Tahsildhar,
Madurantagam,
Having office at Madurantagam Town & Taluk
Kancheepuram District.

3.The National Highway Authority of India,
having office at No.1/54,
28, Butt Road, Sri Towers,
SP Industrial Area,
Near Kathipara Junction, Chennai.

4.The Competent Authority and Special
District Revenue Officer (Land Acquisition)
National Highway-45, Kancheepuram.

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the
Constitution of India, against the fair and decretal order dated 01.10.2024



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in I.A.No.1 of 2023 in O.S.No.72 of 2018 on the file of the learned
Subordinate Judge at Madurantagam.

For Petitioner : Mr.K.Govi Ganesan

For RR1, 2 & 4 : Mr.M.Murali, Govt. Adv.

For R3 : Mrs.S.R.Sumathi

ORDER

This civil revision petition arises against the order of the learned Subordinate Judge at Madurantagam in I.A.No.1 of 2023 in O.S.No.72 of 2018, dated 01.10.2024.

2. The civil revision petitioner is the plaintiff and respondents are the defendants in the suit. O.S.No.72 of 2018 has been presented for a declaration of title that the plaintiff is the owner of the suit schedule mentioned property and for delivery of possession of “B” schedule property.

3.It is the case of the plaintiff that entire extent of his properties was about 15 cents. He claims to be the owner of the said property by virtue of purchase made by him on 11.11.1983. He pleads that the



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defendants had acquired 12 cents of the 15 cents leaving aside 3 cents for which he continues to be the owner. When he was attempting to put up a construction over 3 cents, which had not been acquired, his possession was interfered with. Hence, the suit for the aforesaid reliefs. Written statements have been presented by all the parties.

4. The plaintiff took out an application in I.A.No.1 of 2023 seeking for appointment of an Advocate Commissioner to measure the suit schedule mentioned property along with the help of the surveyor and to submit a report. This application was resisted by the National Highways Authorities of India stating that the suit is at the stage of trial and that the acquisition itself was based on the revenue records that have been maintained by respondents 1, 2 & 4. Hence, there is no necessity for a surveyor to survey “A” or “B” schedule mentioned property.

5. The submission of the National Highways Authorities of India persuaded the learned Trial Judge to dismiss the application. Hence, this revision.



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6. When the matter came up for admission, I asked Mr.K.Govi

Ganesan to serve the entire papers on Mr.M.Murali and Mrs.S.R.Sumathi, the respective standing counsel for defendants 1, 2 & 4 and 3. Papers have been served and I took up the matter for final disposal.

7. I heard the submissions of the respective counsel and I have gone through the entire records.

8. The long and short of the case of the plaintiff is that he was the owner of 15 cents. Out of 15 cents, 12 cents were acquired. Therefore, the remaining 3 cents continue to belong to him. He pleads that he wants to put up a construction over the 3 cents and since the property had been taken over by the defendants, he came forward with the suit for the aforesaid reliefs.

9. It is the case of the 3rd defendant that they have acquired the lands for the purpose of laying the National Highway, only after the survey had been conducted by the revenue authorities. The National Highways Authority pleads that the records are unimpeachable and therefore, no Commissioner need to be appointed.



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10.The point that the Court has to decide in the suit whether the entire extent of 15 cents, that allegedly belong to the plaintiff, was acquired or whether the plaintiff continues to have the title over the remaining 3 cents.

11.When there is a dispute as regards the lie, identity and extent of the property, the Supreme Court of India, in ***Haryana Waqf Board v. Shanti Sarup and others, 2008 (8) SCC 671***, held that the appointment of an Advocate Commissioner will assist the Court at the time of rendering a judgment in such kind of cases.

12.This is a simple case where the plaintiff pleads that he has excess holdings after the acquisition. If an Advocate Commissioner were to submit a report, then it will assist the Court. The fact that the application was presented with the delay is not a ground to dismiss the application. An Advocate Commissioner in terms of Order XXVI Rule 9 of the C.P.C. is appointed to “elucidate the matter in issue”, which in this case is, whether the plaintiff is entitled to 3 cents, after the lands have been acquired by the 3rd defendant.



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13.In the light of the above discussions, this civil revision petition succeeds. The impugned order is set aside. The learned Subordinate Judge at Madurantagam shall issue a warrant to an Advocate Commissioner, who is well versed on the civil side, to measure the “A” and “B” schedule mentioned properties along with the help of the surveyor. Defendants 2 & 4 shall assist the surveyor with such records as it deem fit at the time of execution of the warrant.

14.The civil revision petition stands allowed on the above terms.
No costs. Consequently, connected miscellaneous petition is closed.

09.01.2025

Index:Yes/No
Internet:yes/No
Neutral Citation:Yes/No

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To
WEB COPY

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- 3.The Tahsildhar,
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V.LAKSHMINARAYANAN,J.

Kj

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