

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23073 of 2013

And

M.P.Nos.1 and 2 of 2013 and 1 of 2014

P.Govindasamy

... Petitioner

Vs.

1. The Union Territory of Pudhucherry,
Rep. by its Chief Secretary
Secretariat,
Pudhucherry.
2. The Tahsildar
Taluk Office,
Oulgarpet, Pudhucherry
3. The Deputy Collector (Revenue), North
Taluk Office,
Pudhucherry.
4. The Arumaparthapuram
Primary Agri Co-Operative Credit Society
rep. by its Administrator
Arumaparthapuram,
Pudhucherry.

... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the 2nd respondent in his proceedings in No.636/ TOO/FS/LG/2013/ 433 dt.19.07.2013 and quash the same.

For Petitioner : Mr.D.Ravichander

For Respondents : Mr.A.Tamilvanan for R1 to R3
Government Advocate (Pondicherry)
Mr.R.Sreedhar for R4

O R D E R

Heard Mr.D.Ravichander, learned counsel appearing for the petitioner, Mr.A.Tamilvanan, learned Government Advocate (Pondicherry) appearing for the respondents 1 to 3 and Mr.R.Sreedhar, learned counsel appearing for the fourth respondent.

2.Petitioner has filed this writ petition seeking for issuance of Writ of certiorari to quash the order passed by the second respondent dated 19.07.2013.

3.By the impugned order, the second respondent who is the Tahsildar, Taluk Office, Oulgarpet, Pudhucherry has advised the Deputy Collector (Revenue), North Taluk Office, Pudhucherry to convey his opinion stating that the portion mentioned in his order utilized by the counter petitioner who is the writ petitioner herein is nothing but criminal trespass and therefore, the petitioner who is the fourth respondent herein may be advised to lodge a complaint before the Station House Officer, Reddiar Palayam against the writ petitioner for illegal trespass. The writ petitioner has been further advised to restrict the compound wall as per the extend of ownership by virtue of the sale deed dated 04.05.1984 registered as Document No.853 of 1984. Further, there is an observation stating that the writ petitioner has no locus standi to claim the right over the property for the portion marked in the sketch enclosed in the impugned order. The challenge in the impugned proceedings is that it is illegal, arbitrary and without jurisdiction.

4.Counter affidavit filed by the respondents seeks to justify the action as per the Government Order in G.O.Ms.No.104 dated 16.11.2007. The relevant portion of the G.O.Ms.No.104 dated 16.11.2007 has been extracted in the counter affidavit. Though the Government Order has not been produced, from a perusal of the extract, it is seen that the Government has constituted an Advisory Committee, comprising of the Tahsildar, Taluk Office, Sub-registrar, Taluk Surveyor, Station House Officer of the concerned locality to examine certain issues which may arise within their jurisdiction.

5.On a reading of the scope and functions of the said Administrative Advisory Committee, it is seen that it is only an Advisory Committee and they have no power to interfere in property rights or pass orders to hand over possession of a immovable property. At best they can advise the parties to resort to appropriate remedies available under law. Therefore, the impugned proceedings can only be taken as an advise. However, the second respondent has made certain specific observations stating as if the

petitioner is a trespasser. Merely based on the advise rendered by the second respondent, action cannot be initiated against the writ petitioner since the writ petitioner has to be heard in the matter and the competent authority has to decide as to whether there is an encroachment or an allegation of criminal trespass is made out.

6. Therefore, the impugned order giving sweeping directions and observations which are beyond the scope of the Advisory Committee is definitely not binding on the writ petitioner. Hence, this writ petition is allowed and the impugned order is quashed. However, if the fourth respondent Society has a complaint against the petitioner of encroachment, it is open to the fourth respondent to approach the appropriate legal forum for necessary relief in this regard.

7. The writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To

1. The Chief Secretary,
The Union Territory of Pudhucherry,
Secretariat,
Pudhucherry.
2. The Tahsildar
Taluk Office,
Oulgarpet, Pudhucherry
3. The Deputy Collector (Revenue), North
Taluk Office,
Pudhucherry.

+1cc to M/s.R.Sreedhar, Advocate, S.R.No.15116

+1cc to M/s.D.RaviChander, Advocate, S.R.No.15535

+1cc to the Senior Advocate cum Senior Public Prosecutor (Pondichery),
High Court, Madras, S.R.No.15286

W.P.No.23073 of 2013 and
M.P.Nos.1 and 2 of 2013
and 1 of 2014

RSK (CO)
CA(25/03/2015)