

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN  
and  
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.23835 of 2017  
and WMP.Nos.25065 & 25066 of 2017

P.Arumugam

.. Petitioner

Vs.

The Commissioner,  
Oulgaret Municipality  
Municipality Office,  
Jawahar Nagar,  
Puducherry - 605 005.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorari, to call for the records of the respondent in order dated 19.7.2017 vide Form-B in F.No.ES/24/EE/DM/12-13 issued under Section 416(1) of the Pondicherry Municipalities Act, 1973 and quash the same as illegal.

For Petitioner : Mr.J.Suresh

For Respondent : Mr.J.Kumaran

Standing Counsel (Pondy)

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN,J.]

By consent, the writ petition is taken up for final disposal.

2. Mr.J.Kumaran, learned Government Pleader (Pondy) accepts notice on behalf of the sole respondent.

3. The petitioner claims that he is the absolute owner of the land and building comprised in S.No,158/15, Cadastre No.526 1/3, Patta No.788, admeasuring to an extent of 1026 sq.ft. situated at Ganapathichettikulam Village, Kalapattu Revenue Village, Oulgaret Municipality, Puducherry. The petitioner claims that he had purchased the property, vide registered sale deed Document No.1154/1999, dated 12.3.1999, registered on the file of the Sub Registrar Office, Uzhavarkarai, Puducherry.

The petitioner would aver that to his shock and surprise, he received a notice dated 27.02.2017 under Sub-section (1) of Section 451 of the Pondicherry Municipalities Act, 1973, alleging that his property has been built up on the pathway in Survey No.157/2, used by the public. The petitioner, in response to the said notice, submitted his reply dated 22.03.2017 pointing out that the properties are ancestral in nature and the patta was also issued in the name of his great grandfather Mr.Vanchinathan, and subsequently it was re-surveyed and assigned with S.No.158/15 and a joint patta was issued in favour of his great grandfather. The petitioner would also state that after the purchase of the property, it was surveyed and boundaries were marked as early as on 14.05.1998 and as such, the stand of the respondent that he had encroached upon the public pathway and put up construction and was issued with the impugned order dated 19.7.2017 to evict him from the said premises, is in violation of principles of natural justice and hence prays for interference.

4. The learned counsel appearing for the petitioner would submit that despite the response submitted by the petitioner to the respondent, no orders have been passed by the respondent and since the threat of eviction is imminent, the petitioner is constrained to approach this Court by filing this writ petition.

5. The learned Government Pleader (Pondy) appearing for the respondent-Municipality would submit that action has been taken by the respondent strictly in accordance with law against the petitioner, and since he had encroached upon the public road and put up the construction, he is liable to be evicted.

6. This Court has considered the rival submissions and perused the materials placed before it.

7. It is relevant to extract Section 416 and Section 419 of the Pondicherry Municipalities Act 1978.

Section 416. Eviction of unauthorised occupants.-

(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 115 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Commissioner is satisfied that the municipal premises are in unauthorised occupation, the Commissioner may, on a date to be fixed or the purpose, make an order of eviction for reasons to be recorded therein directing that the municipal premises shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the municipal premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty-five days of the date of its publication under sub-section (1), the Commissioner or any other officer duly authorised by the Commissioner in this behalf may evict that person from, and take possession of, the municipal premises and may, for that purpose, use such force as may be necessary.

419. Power of Commissioner.- The Commissioner shall, for the purpose of holding any inquiry under this Chapter, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) when trying a suit, in respect of the following matters, namely: --

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) any other matter which may be prescribed.

8. The petitioner has submitted his response to the impugned notice sent by the respondent, and in the light of the facts and circumstances and without going into the merits of the claim projected by the petitioner, this Court directs the respondent to take into consideration the reply dated 22.03.2017 submitted by the petitioner in response to the impugned notice dated 27.02.2017, and after affording an opportunity of personal hearing either to the petitioner or his authorised representative, shall consider and dispose of the case on merits and in accordance with law, by following the provisions under Section 419 of the Pondicherry Municipalities Act, 1973, within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner and till such time, shall defer further decision in terms of the impugned notice dated 19.07.2017.

9. With the above direction, the writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-  
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

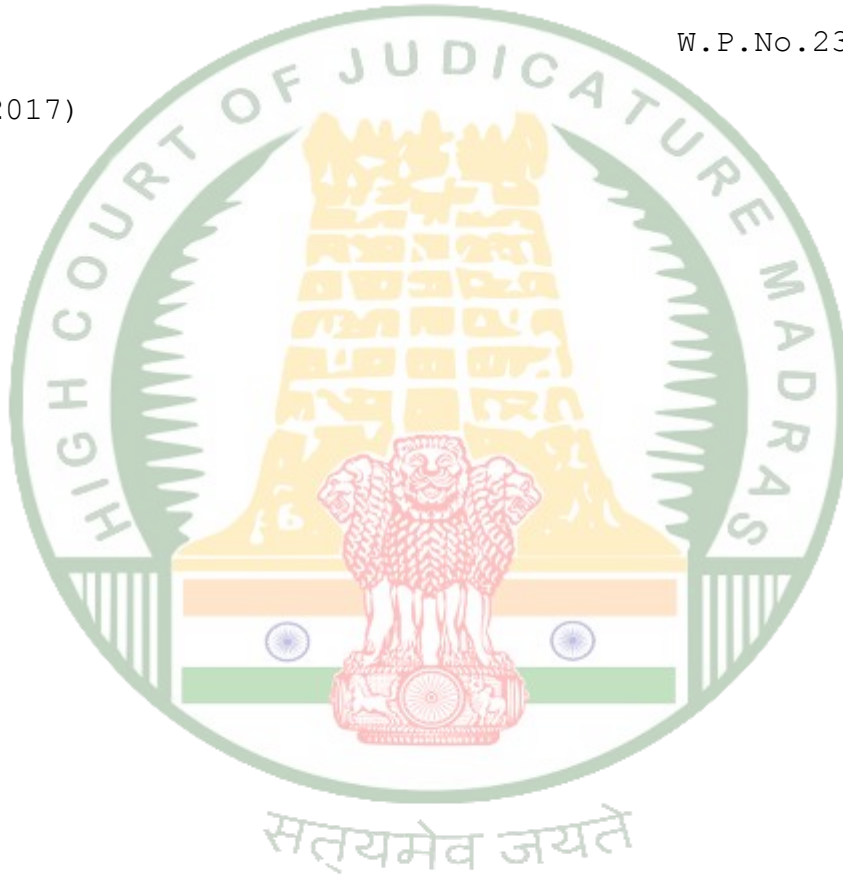
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To:

The Commissioner,  
Oulgaret Municipality  
Municipality Office,  
Jawahar Nagar,  
Puducherry - 605 005.

W.P.No.23835 of 2017

SP(25/09/2017)



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