

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.28191 to 28194 of 2004

The Commissioner,
Ariankuppam Commune Panchayat,
Ariankuppam, Pondicherry. .. Petitioner in all W.Ps.

Vs.

Ranganathan @ Patchaiappan .. 1st Respondent in W.P.28191/2004

Saroja .. 1st Respondent in W.P.28192/2004

Puspa .. 1st Respondent in W.P.28193/2004

Velayutha Gramani .. 1st Respondent in W.P.28194/2004

The Additional District Judge,
Pondicherry. .. 2nd Respondent in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the file of Appellate authority under the Commune Panchayat Act viz., II Additional District Judge, Pondicherry relating to M.A.5/2003, M.A.6/2003, M.A.7/2003 and M.A.4/2003 respectively and to quash the impugned orders dated 22.4.2003 passed in M.A.5/2003, M.A.6/2003, M.A.7/2003 and M.A.4/2003, respectively, and direct execution of the order of eviction dated 07.03.2003 passed by the petitioner, pursuant to the order of this Court in W.P.No.12464 of 2003.

For Petitioner in all W.Ps.: Mr.J.Kumaran,
Govt. Advocate (Pondicherry)
For 1st Respondent
in all W.Ps. : Mr.S.Vijayakumar

C O M M O N O R D E R

As the issue involved in all these Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

2. The petitioner has come up with these Writ Petitions seeking to quash the impugned orders dated 22.04.2003 passed in M.A.5/2003, M.A.6/2003, M.A.7/2003 and M.A.4/2003, respectively, and for a direction to execute the order of eviction dated 07.03.2003 passed by him pursuant to the order of this Court in W.P.No.12464 of 2003.

3. Aggrieved by the impugned order passed by the petitioner, the private respondents, viz. the 1st respondent in all the Writ Petitions, preferred an appeal under Section 252(2)(a) of Pondicherry Village and Commune Panchayat Act, 1973 assailing the impugned order dated 07.03.2003, whereby the petitioner directed eviction of the aforesaid respondents from the land, which is the pathway to the burial ground at Manavelly. The petitioner contended that the contesting respondents herein are the encroachers. The 2nd respondent/II Additional District Judge, Pondicherry, by relying on G.O.Ms.18, Revenue Department, dated 09.04.1999 has held that there is nothing on record to show that the Government under the Government Order referred to above, ultimately decided as against the appellants/contesting respondents herein that they are not entitled for the premises relating to the occupancy certificate or for free patta elsewhere. The alternatives available on the part of the Government were:- (i) Either to confer patta relating to the premises concerned in this case; or (ii) to give free patta elsewhere; or (iii) to reject or by deciding that the appellants/contesting respondents herein are not entitled for either of the aforesaid two alternatives.

4. Based on the above order of the 2nd respondent, the Government of Pondicherry promised the appellants/contesting respondents herein to issue Occupancy Certificate. However, the three alternatives are given in the Government Order. The 2nd respondent has observed that based on the communication with regard to the Occupancy Certificate, the Government cannot pass any eviction order. Pursuant to the observations made and on account of the order dated 07.02.2003 passed by this Court in W.P.No.12464 of 2001 filed by M/S.P.Shanmugam against five encroachers, of whom, four are contesting respondents in the present writ petition, the Revenue Department was directed to consider the request of those encroachers after getting necessary clarification on the issue.

5. On 19.12.2005, a decision was taken by the Revenue Secretary, holding that the Occupancy Certificate does not confer the right to ownership and that it can be withdrawn at any point of time. It is also stated therein that the respondents have occupied the public pathway and living there till today and that the encroachment on the public pathway has got to be cleared for development of the same in larger public

interest. The contesting respondents herein are termed as encroachers.

6. It is seen that Court notice has been sent to the private respondents in this Writ Petition. This Court also directed the Government Advocate appearing for the petitioner to issue a fresh private notice to the contesting respondents. Though the notice sent by the petitioner has been served on the private respondents, the matter stood adjourned time and again. At the instance of this Court, the private respondents were also intimated about the hearing, even though such intimation cannot be construed as a private notice.

7. In the light of the above discussion and taking into account the observations made by the 2nd respondent and in view of the order of this Court dated 23.12.2004 made in W.P.No.25944 of 2004, it is clear that the private respondents herein are encroachers and they can be evicted. If the private respondents herein, i.e. the 1st respondent in each of these Writ Petitions, fail to vacate the premises within a period of two days from the date of receipt of a copy of this order, it is deemed that they have vacated the premises and the Government can enter into the property in question and take possession of the same.

The Writ Petitions are disposed of with the above observation. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sts/aeb

To:

The II Additional District Judge,
Pondicherry.

W.P.Nos.28191 to 28194 of 2004

SR(CO)
EU(04/10/2017)