

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

W.P.No.21253 OF 2018

Sadhasivam @ Babu

... Petitioner

vs.

The Deputy Collector,
Office of the Deputy Collector,
(Revenue) North cum Estate Officer,
Government of Puducherry,
Puducherry - 605 013.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the impugned order dated 27.07.2018 passed by the Respondent under Section 5A of the Public Premises (Eviction of Unauthorized Occupants Act), 1971 and quash the same and consequently direct the Respondent not to take any coercive action against the properties comprised in old Survey Nos.1747 3/4, 1748 3/4, 1747 2/4, 1748 2/4, 1747 1/4, 1748 1/4 correlated to R.S.No.271/4B, which is situated at Thattanchavadi Village, Oulgaret Taluk and Commune, Puducherry Union Territory.

For Petitioner : Mr.R.U.Dinesh Rajkumar

For Respondent : Mr.D.Krishnamoorthy,
for Mr.C.T.Ramesh,
Addl. Govt. Pleader (Pondy)

O R D E R

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

Petitioner has preferred the present Writ Petition seeking to quash the impugned order dated 27.07.2018 passed by the Respondent under Section 5A of the Public Premises (Eviction of Unauthorized Occupants Act), 1971 and for a consequential direction to the Respondent not to take any coercive action

against the properties comprised in old Survey Nos.1747 3/4, 1748 3/4, 1747 2/4, 1748 2/4, 1747 1/4, 1748 1/4 correlated to R.S.No.271/4B, which is situated at Thattanchavadi Village, Oulgaret Taluk and Commune, Puducherry Union Territory.

2. Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader (Pondy) appearing for the Respondent.

3. According to the Petitioner, he is not at all connected with the properties comprised in R.S.Nos.271/93, 271/95, 271/96, 271/97, 271/98, 271/99, 271/100, 271/108, 271/109 and 271/1B/2 nor with properties situated in R.S.No.271/4B, which is situated at Thattanchavadi Village, Oulgaret Taluk and Commune, Puducherry Union Territory, which belongs to some members of his family. His apprehension is that the Respondent/Deputy Collector (Revenue) North-cum-Estate Officer, Puducherry is making an endeavour to enforce the impugned order dated 27.07.2018 in respect of the properties comprised in Revenue Survey Numbers, as stated supra.

4. In this connection, the version of the Petitioner is that, he, along with co-owners are in possession of the properties situated at R.S.No.271/4B and 5A of the Public Premises (Eviction of Unauthorized Occupants Act), 1971 and that notice was issued in regard to the aforesaid Revenue Survey Numbers, which has nothing to do with the lands owned by its real owners. Further, by means of three Registered Sale Deeds dated 17.11.1967, Tmt. Sellapappa, W/o.Arumugam Muthu @ Subburayan, purchased properties comprised in Cadastre number or Old Survey Nos.1747 $\frac{3}{4}$, 1748 $\frac{3}{4}$, 1747 2/4, 1748 2/4, 1747 $\frac{1}{4}$, 1748 $\frac{1}{4}$, measuring a total extent of 00.16.40 Ha or 17,653 sq. ft. During the re-survey in the year 1972, the properties were assigned Resurvey No.271/4. But, the extent was wrongly recorded as 00.11.50 Ha instead of 00.16.40 Ha.

5. As a matter of fact, this erroneous entry was pointed out by the then Taluk Tahsildar, through his Letter dated 29.09.1975. Furthermore, Resurvey No.271/4 was further sub-divided as 271/4A (acquired for road expansion) and in R.S.No.271/4B, the properties were retained by the aforestated Tmt.Sellapappa and she was in possession and enjoyment of the said properties from the date of purchase. Apart from that, the Government had acquired lands measuring an extent of 00.03.00 Ha for National Highways Authority of India and the remaining extent was in the possession and enjoyment of the above said person.

6. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that a Partition Deed

dated 09.06.2003 was registered in the Office of the Sub-Registrar, Oulgaret between the legal heirs of Late Tmt.Sellapappa viz. (i) Muthu Anjalai, W/o.Muthu Arumugam, (ii) Muthu Senthil Kumar, S/o.Muthu Arumugam, (iii) Sadhasivam Parameswari, D/o.Muthu Subburayan @ Arumugam and (iv) Saint Julian Deivanayagi, D/o.Muthu Subburayan @ Arumugam, whereby and whereunder, the remaining extent of 14,000 sq. ft. was divided into three equal parts of 4,000 sq. ft. each with common passage and each one was allotted 4,000 sq. ft. With a view to rectify the wrong extent of entry made in the Settlement Register, a separate Petition was filed before the Settlement Officer-I under Section 23(1) of the Pondicherry Survey and Boundaries Act, 1967, which is pending for disposal.

7. While that being the fact situation, the Respondent had issued a Show Cause Notice, dated 25.06.2018 under sub-Section (1) and clause (b)(ii) of sub-Section (2) of Section 4 of the Public Premises (Eviction of Unauthorized Occupants Act), 1971, to the Petitioner. The Petitioner is in France and therefore, he had authorized his Agent to appear before the Respondent to file his explanation for the Show Cause Notice issued. The Petitioner's explanation was submitted by the Power Agent of the Petitioner and in the said reply/representation, narration was made in regard to the title of the property, by giving necessary details of the Sale Deed, which were registered in the year 1967 and Partition Deed made in the year 2003. In reality, the explanation of the Petitioner would show that he had no right title and interest over the properties comprised in R.S.No.271/4B and that the properties described in the Schedule of the Show Cause Notice had nothing to do with the properties in R.S.No.271/4B.

8. The prime grievance of the Petitioner is that despite the representation/explanation submitted by the Petitioner (through his Power Agent) before the competent authority for the Show Cause Notice dated 25.06.2018, the Respondent had issued the impugned order dated 27.07.2018 under Section 5A of the Public Premises (Eviction of Unauthorized Occupants Act), 1971, directing the Petitioner to remove the building/structure/fixtures erected goods displayed/spread/cattle/animal brought on the public premises mentioned in the Schedule therein, on or before 07.08.2018.

9. The Respondent had described the public premises as properties situated in R.S.No.271/93, 271/95, 271/96, 271/97, 271/98, 271/99, 271/100, 271/108, 271/109 and 271/1B/2. Since the Petitioner has no other efficacious remedy, he has approached this Court by filing the present Writ Petition praying for passing of an order by this Court to call for the records of the impugned order dated 27.07.2018 passed by the

Respondent, under Section 5A of the Public Premises (Eviction of Unauthorized Occupants Act), 1971, and to quash the same.

10. Per contra, it is the submission of the Learned Additional Government Pleader for the Respondent that the Department of Adi Dravidar Welfare, Puducherry had approached the Respondent with a request to evict unauthorized encroachment of compound wall in the land belonging to Adi Dravidar Welfare Department in R.S.No.271 of Thattanchavady Revenue Village, as the same is blocking the pathway to the nearby layout and also for construction of Cultural Stage, Library and Final Obsequies shed to the people of Gnanathiyagu Nagar.

11. It is represented on behalf of the Respondent that the residents of the aforestated place are predominantly poor people, who are granted patta and that the above said encroached land is required for basic facilities to be provided for the residents. Therefore, the Respondent had instructed the Tahsildar of the concerned area to make verification of the state on ground, ownership, etc. The Tahsildar, vide his Reports dated 01.06.2018 and 11.06.2018, had stated that one M.Sadhasivam, S/o.Murugesan has erected a wall in the road portion in R.S.No.271/1B/2 of Thattanchavady Revenue Village to a length of 5.8 metres from North to South, causing obstruction to the approach of the plots covered in the aforesaid Survey Number by fixing pre-cast slabs and also erected a shed made of wooden poles with iron sheet roof. An extent of 00-10-85 hectare (1085 square metre) is encroached in the above said land.

12. Continuing further, a perusal of the Layout sketch prepared earlier before issuance of patta would point out that the Petitioner had provided a Compound Wall alongside the end of the Layout on the eastern side, by providing a Compound Wall from North to South and he had erected pre-cast slabs inside the encroached portion, based on their Partition Deed. Under these circumstances, the Respondent issued Form A Notice on 18.06.2018 under sub-section (1) and (2) of Section 4 of Public Premises (Eviction of Unauthorized Occupants Act), 1971, calling upon the Petitioner to appear before the Respondent's Office on 25.06.2018 and produce the relevant documents and to submit his explanation, if any.

13. By way of Reply, dated 27.06.2018, one A.Senthilkumar had averred that he was appearing on behalf of the land owner and took a plea that the land in question belongs to M.Sadhasivam as per the Partition Deed, dated 09.06.2003. Separately, one J.Jayachandran represented on 09.07.2018 to the effect that the land comprising an area of 00-16-40 Hectares originally belonged to Tmt.Sellapappa, and the same was wrongly

mentioned as 00-11-50 Hectares in the re-survey process and subsequently, an extent of 00-03-00 Hectares was acquired by the Government and is in possession of the remaining area.

14. The said J.Jayachandran also took a stand that the Adi-Dravidar Welfare Department, at the time of allotting free house sites, had not properly made physical measurements and allotted to some beneficiaries their portions of land and hence, a Civil Suit in O.S.No.180 of 2018 was filed on the file of the Learned Additional Sub Judge, Puducherry and a permanent injunction was granted on 29.10.2009, restraining free house site allottees from entering into their land. Also, that the said land was partitioned among the legal heirs of Tmt.Sellapappa on 09.06.2003 and therefore, he made a request to drop the eviction proceedings.

15. The Learned Additional Government Pleader (Pondicherry) for the Respondent submitted that the Director of Adi-Dravidar Welfare Department, in his Letter dated 24.07.2018, took a plea that the encroachment is blocking the way to the Public Utility Buildings and to the residents of the Layout. Further, it is the submission of the Learned Additional Government Pleader (Pondicherry) for the Respondent that the aforesaid injunction is against the five persons (Defendants), whose identity or their nature of claim as allottees was not known and that the Trial Court had only restrained the aforesaid persons from interfering with the possession of the Plaintiffs in the Civil Suit. Therefore, the Department of Adi Dravidar Welfare opined that the whereabouts of the allottees was not known and no claim was made in respect of the allotted plots and in fact, the allotment order was cancelled on 11.04.2018 by the Department.

16. The clear-cut stand taken on behalf of the Respondent is that, since the Petitioner had not brought any valid documents claiming ownership over the encroached land and as the possession in the hands of the Petitioner is unauthorized, Form AA Notice as per sub-section (2) of Section 5A of the Public Premises (Eviction of Unauthorized Occupants Act), 1971, was issued on 27.07.2018, calling upon the Petitioner to show cause as to why the encroachments made in the land belonging to the Government should not be removed. On 09.08.2018, the above said J.Jayachandran, on behalf of the Petitioner, had submitted a Reply in response to Form AA Notice, wherein, he had prayed for stopping the eviction process till the disposal of the Settlement Correction Petition, pending before the Settlement Officer.

17. The crystallized stand of the Respondent as seen from the counter at paragraph 3 is that there is no proposal

contemplated in regard to R.S.No.271/4B and that apart, the Respondent had correctly described R.S.No.271/93, 95, 96, 97, 98, 99, 100, 108, 109 and 271/1B/2. Also that the Respondent at paragraph 4 of the counter had mentioned that the Petitioner seems to have enjoyed the lands in excess even prior to the partition that took place among three persons and that the correct position is that they possessed only 00-11-50 Hectares, which was fully acquired by the Government by means of Award No.17/75, dated 06.11.1975 and the amount of compensation, viz. Rs.3,449.89 was deposited as per Section 31(2) of the Land Acquisition Act, 1894 and the details of the same are as under:

S.No.	Cadastre No.	Extent
1	1748/3/4	00-00-70
2	1747/3/4	00-05-20
3	1748/4/4	00-00-50
4	1747/4/4	00-05-35
Total		00-11-75

18. Resultantly, it is the submission of the Learned Additional Government Pleader (Pondicherry) appearing for the Respondent that the impugned order dated 27.07.2018 was issued only in respect of R.S.No.271/4B, which are comprised in the layout made by the Adi-Dravidar Welfare Department and represent the Utility Public Areas and Road Portions. Furthermore, the notice issued by the Respondent do not relate to R.S.No.271/4B, for which, the Petitioner claims his ownership. In short, the stand of the Respondent is that Notices were sent only relating to the land acquired by the Government and allotted as public utility area and roads, and therefore, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is being invoked to remove the encroachments and that the encroachment is properly mentioned in the notices issued by the Respondent.

19. By way of reply, the Learned Counsel for the Petitioner submits that for the notice dated 25.06.2018 issued under sub-Section (1) and sub-Section (2) of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, a detailed reply dated 09.07.2018 was furnished by one J.Jayachandran on behalf of the Petitioner, narrating the entire qualitative and quantitative details, setting out relevant facts and ultimately prayed for dropping of eviction process in the lawful possession of the Petitioner's land. But, the said reply was not taken into consideration with all seriousness and earnestness by the Respondent and in a hurried fashion, the impugned notice dated 27.07.2018 was issued under sub-Section (2) of Section 5A of the Public Premises (Eviction of

Unauthorized Occupants) Act, 1971 and therefore, the said Notice is nonest in the eye of law.

20. At this juncture, a mere running of the eye of the Survey Numbers mentioned in the impugned Notice dated 27.07.2018 latently and patently points out that the same was not issued in respect of R.S.No.271/4B. However, it only refers to R.S.No.271/1B/2 of Thattanchavady Revenue Village. No doubt, the procedures envisaged under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, is a summary one and the same is not in negation of Article 19(1)(f) of the Constitution of India, as per the decision of the Honourable Supreme Court in Kaiser-I-Hind (P) Ltd. vs. National Textile Corporation (Maharashtra North) Ltd., (2002) 8 SCC 182. Also, the ingredients to Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, on the ground of violation of principles of natural justice are not void as per the decision rendered in M.Soberoi vs. Union of India, AIR 1970 P & H 407.

21. As far as the present case is concerned, even though the impugned notice dated 27.07.2018 cannot be held to be one in violation of principles of natural justice, yet, this Court is of the considered view that the provisions of Section 4(2) of the Act are mandatory in nature and in fact, the Respondent, at the time of issuing the impugned notice dated 27.07.2018, should have taken into account the earlier representation/reply of the Petitioner, dated 09.07.2018. In fact, before issuing the notice dated 25.06.2018, the Respondent has borne in mind the relevant details of the Petitioner's reply dated 09.07.2018 and then, issued the impugned notice. However, a perusal of the impugned notice dated 27.07.2018 shows that there is no reference to the earlier reply of the Petitioner, dated 09.07.2018 for the Show Cause Notice dated 25.06.2018 or there is no iota of any communication whatsoever to point out whether those contents of reply/representation of the Petitioner were taken into account and ultimately, either approving the stand of the Petitioner or repudiating the same.

22. As such, this Court, without precipitating the matter any further, in the interest of justice and fair play, directs the Petitioner (through his Power Agent) to submit his objection/reply in a detailed form to the impugned Notice dated 27.07.2018, before the Respondent within two weeks from the date of receipt of a copy of this order. Soon after the Petitioner furnishes his Reply to the impugned Notice dated 27.07.2018, the Respondent shall look into the same and pass a detailed order adverting to all the points factually and legally raised by the Petitioner, in his reply/representation and before passing fresh final orders in the subject matter in issue, the Respondent shall provide an opportunity of hearing to the Petitioner,

because of the reason that the matter relates to the property right and the Petitioner (through his Power Agent) has to avail the said opportunity in a diligent and prudent manner. Such final order shall be passed by the Respondent in an uninfluenced, unbiased and in an untrammelled manner and that too with an open mind, within a period of four weeks thereafter.

23. Before parting with the case, this Court makes it quite clear that if the Respondent comes to a definite conclusion with the Petitioner's claim in regard to the lands, which relate to R.S.No.271/4B, then, it is open to the Respondent to take such action, as he deems fit and proper based on the facts and circumstances of the case, which floats on the surface.

With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected W.M.P.No.24923 of 2018 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Deputy Collector,
Office of the Deputy Collector,
(Revenue) North cum Estate Officer,
Government of Puducherry,
Puducherry - 605 013.

+lcc to Mr.R.U.Dinesh Rajkumar, Advocate Sr.59662
+lcc to the Government Pleader Sr.59929

W.P.No.21253 of 2018

srg 11/09/2018