

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 27.07.2018

Order Pronounced On : 03.08.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.4170 of 2009  
and M.P.No. 1 of 2009

Alphonse ... Petitioner

Vs.

1.The Commissioner,  
Pondicherry Municipality,  
Puducherry.-01.

2.The Revenue Officer-I,  
Pondicherry Municipality,  
Puducherry.-01.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, call for the records on the file of the first respondent in proceeding No.891/PM/ROI/Survey/08-09, dated 06.03.2009 and quash the same.

For Petitioner : Ms.Elizabeth Ravi

For Respondents: Mr.A.Gandhiraj  
Government Pleader (Pondy),  
Assisted by Mr. V.Balamurugan

सत्यमेव जयते  
O R D E R

The instant writ petition is directed against the order dated 06.03.2009 passed by the Commissioner, Pondicherry Municipality, in proceeding No. 891/PM/ROI/Survey/08-09.

2.The writ petitioner has been filed on the following facts:-

" (a) It is the averment of the petitioner that the land situated in Survey No.1649 Puducherry Municipal limits belongs to his father which has been purchased under registered sale deeds dated 08.03.1962 and 01.08.1963. After the death of his father the lands in Survey No.1649 9/24 and 10/24 was allotted to the petitioner and raised superstructure on the property.

(b) The petitioner and his family are possession of vacant land, which was earmarked as Survey No.1649 7/24 and the same was being used as a public pathway and is the only passage available to the plot owners to reach the Ellaipillichavady Road situated on the western side of the property. The land was a private road and was being exclusively used by the plot owners (family to reach their lands).

(c) The Government of Pondicherry acquired a portion of the land lying towards the west of the Ellaipillichavady Road for formation of the ECR by-pass road. Award No.12/78 dated 31.03.1978 was passed for the lands which were acquired.

(d) After the acquisition of the land there was no need to maintain the pathway since ECR was directly accessible from their property. An attempt was made to take control of the vacant side earmarked as Survey No.1649 7/24 by certain land grabbers. This was thwarted by the petitioner by filing the civil suit in O.S.No.59/2000 on the file of District Munsif Court, Pondicherry. The suit was decreed and a declaration of the right of the petitioner herein was the plaintiff in the suit was made by the District Munsif, Pondicherry.

(e) The petitioner was served with a notice by the Revenue Officer, Pondicherry Municipality stating that he has encroached in Town Survey No.M/1/10 PT measuring 36.9 x 6.1 = 225.1 square meters within Puduchery Municipal limits and that he should vacate the land.

(f) The petitioner gave a representation on 04.09.2008 and he was called to appear in person before the Revenue Officer, Puducherry. The petitioner was not able to attend the proceedings and an order dated 24.12.2008 was passed calling upon the petitioner to vacate the premises.

(g) The order dated 24.12.2008 was challenged before this Court in W.P.No.1801 of 2009 and this Court by order dated 24.12.2008 by order dated 16.02.2009 set aside the order dated 24.12.2009 by observing as under:-

"27. Therefore I am of the opinion that the impugned order is liable to be quashed solely on the ground of failure to record reasons as per the mandate of Section 416 of the Act. Accordingly the impugned order dated 24.12.2008 is quashed with liberty to the first respondent to pass fresh orders as provided by Section by Section 416 of the Act after granting an opportunity of personal hearing to the petitioner. The learned counsel for the

petitioner as well as the learned Additional Government Pleader for Pondicherry have agreed for conducting the personal hearing on 16.02.2009 at 10.30 a.m. by the first respondent in the chamber of the Municipal Commissioner. Accordingly the petitioner is directed to appear before the first respondent at 10.30 a.m., on 16.02.2009 for personal hearing. It is made clear that the enquiry is in continuation of the proceeding initiated by the first and the petitioner is not entitled for fresh notice. The first respondent is directed to consider the explanation submitted by the petitioner and the evidence that may be produced in support of his case during the personal hearing and pass fresh orders on merits and as per law as expeditiously as possible and in any case on or before 6<sup>th</sup> March, 2009."

(h) Consequent to the order, the petitioner was called for the personal hearing on 16.02.2009 asking him to produce document to establish his title. By a letter dated 23.02.2009. The petitioner gave a representation raising the following grounds :-

"1.The land bearing cadastre no:1649 is a private property and it does not belong to the Pondicherry Municipality.

2.The land owner while forming the layout prior to the acquisition proceedings, the need for a private street was then necessity for the plot owners bearing cadastre no: 1649 8/24, 1649 9/24, 1649 10/24, 1649 11/24, 1649 12/24, 1649 13/24, 1649 20/24 and 1649 21/24.

3.The plot bearing cadastre no: 1649 9/24 and 1649 10/24 is my property under a registered sale deed dated 08.03.1962 and 01.08.1963.

4.During the course of sale by the land lord of the layout bearing cadastre no: 1649, the need for a private street bearing cadastre no: 1649 7/24 and 1649 19/24 got eroded as early as in the year 1970's when the public work department, highways started its acquisition proceedings on the land bearing cadastre no: 1649.

5.The layout of the land bearing cadastre no: 1649 was a subject matter of accusation in the 1970's.

6.The land lord while forming the layout formed common pathway or public street bearing cadastre No. 1649 2/24, 1649 14/24, 1649 15/24 and 1649 23/24.

7. On the above facts the said cadastre numbers are streets were laid by the Pondicherry Municipality

and the same is maintained by them till now.

8. From the above averment the cadastre number which were under Municipal control were laid and maintained whereas in the layout, the cadastre number: 1649 7/24 and 1649 19/24 which were not under its control is a private land or road.

9. This is because in the year 1971 under gazette number:32 dated 27.03.1971. The public works department highways acquired the entire extent of the plots bearing cadastre number: 1649 3/24, 1649 4/24, 1649 5/24, 1649 16/24, 1649 17/24 and 1649 18/24 for the information of East Coast Road (ECR) and compensation was paid under award no 12/78 dated 31.03.1978.

10. The highways, public works department after acquisition widened the existing Eallapillaichavady Road up to the proposed private road bearing cadastre No.1649 7/24 and 1649 19/24.

The necessity of a private road got eroded and so the road became private land and not road.

Since the main Ellapillaichavady Road i.e.100ft ECR is abutting the plots bearing cadastre No. 1649 8/24 (T.S.no:11), 1649 9/24 & 1649 10/24 (T.S.no:12), 1649 11/24 (T.S.no:12), 1649 11/24 (T.S.no:13), 1649 12/24 (T.S.no:14), 1649 13/24 (T.S.no:15), 1649 20/24 (T.S.no:16), 1649 21/24 (T.S.no:17) the necessity for another private or plot road is not needed.

So the plot owners to avoid nuisance form the land grabbers annexed the extent of the private land or road to the extent of their plots. This can only be questioned by the land lord of the layout bearing cadastre No.1649 and not by the Pondicherry municipality.

The plot owners are enjoying the extent annexed with their plots since 1971 i.e. for more than 30 years the private land or the road is in the possession of the plot owners T.S.No.11,12,13,14,15,16 and 17. The Pondicherry municipality cannot poke its nose into the right of the above said plot owners over the annexed extent of the private land or road.

11. To substantiate my right over the portion of the private land or road infront of my flats (T.S.No.12). I am constraint to point out that a suit instituted in O.S.No.59/2000 by one Thiru.Selvaraj and others on the file of District Munsif Court, Pondicherry, warranted the Court to appoint a Commissioner and he had submitted a report holding that the ECR-100 feet road lies on the west of my property. No street was found in between my property

and ECR i.e. the national highways. The Court Commissioner holds that my property is having an extent of 120 feet north to south and 86 feet east to west with pucca compound wall. That is from east to west it include the extent of the private property of the land lord which he marked it as plot road.

Therefore, the Pondicherry municipality need not butt in and make lofty claims as if there is a street under its control.

12. To allege trespass, the Pondicherry municipality should prove its ownership because every street maintained by the municipality is gazetted. I demand the municipality to discuss the gazette number and the date its publication notifying the subject matter of the street which its claims right over it.

I also demand the municipality to provide how much it had expended so far for the alleged street for its maintenance from the date the municipality claims control over the alleged street.

13. Even after the above averments given by me if the municipality and its officials sort me and the other plot owners as unauthorized occupiers then it is unlawful and unwarranted.

14. The municipality and its officials should have appreciated my statutory period of possession and right over the vacant private land which was well recognised by the civil court decree in O.S.No.59/2000 on the file of District Munsif Court, Pondicherry.

15. On private property at no stretch of imagination the municipality and its officials can classify the property as a street. They also cannot deprive the plot owners right over the private land which will amount to offend the constitutional right.

16. Therefore, I call upon the municipality not to interfere with the right of the plot owners in the private land bearing cadastre no.1649.

In case the municipality does so interfere with the individual right of the plot owners over the private land then we will be forced to proceed legally against the municipality and its officers personally."

(i) The Commissioner Puducherry Municipality after perusing the reply has passed the impugned order directing the petitioner to vacate the premises. The Commissioner found that the petitioner had not produced any documents which would demonstrate that the petitioner had title to the property in question. This order is sought to be challenged in the instant writ petition.

3. Heard the learned counsel for the petitioner and the respondents and perused the materials available on record.

4. The learned counsel for the petitioner vehemently contended that the petitioner's father had purchased in survey No.1649 which has an extent of 1 acre 26 ares and 10 cents from one Sirkuli Vengu Chettiar under the registered sale deeds dated 08.03.1962 and 01.08.1963 and after his death, he is in exclusive possession of Survey No.1649 9/24 and 10/24. The land in survey No.1649, 7/24 is a private land and is being used as a public pathway. Certain lands were acquired for formation of the ECR road. The acquisition proceedings did not include survey number No.1649, 7/24. It was stated that the property in question was not acquired. It was very vehemently contended that the petitioner is in possession for 30 years. It was contended that the property in question was being used as a public pathway and the right of the petitioner has been declared in O.S.No.59/2009 on the file of Additional District Munsif, Pondicherry. The petitioner has therefore claimed that the impugned order passed on 06.03.2009, herein should be set aside.

5. On the other hand, the learned counsel for the Municipality would contend that in compliance of the order of the High Court the petitioner was called for hearing on 16.02.2009 and was directed to produce the documents to prove his title for the property in question. The petitioner requested for spot inspection of the property and also requested for time to file documents and evidence to prove his title. Surveyor was sent along with the Revenue Officer, who identified the area which was in unauthorized occupation. Even in the survey proceedings the petitioner did not produce any documents. The petitioner only sent a communication on 23.02.2009 stated (supra) raising his claim over the property, but the petitioner did not give any document to produce or prove his title or ownership. The lay out of the area which had been filed does not substantiate the petitioner's title.

6. Other than filing the judgments in O.S.No.59/2000 passed by the Additional District Munsif, Pondicherry in a suit between the private parties and the order of the District Judge in Appeal Suit No.13 of 2001 confirming the order of the District Munsif, the appellants have not filed any document showing their title. No document has been filed by the petitioner to substantiate his title over the property. The sale deeds which have been filed by the petitioner in an additional type set and which was not produced before the Commissioner also does not substantiate the claim of the petitioner that he is the owner of the property in dispute.

7. Admittedly, the Pondicherry Municipality is not a party in the suit and therefore is not bound by the judgment of the District Munsif as affirmed by the District Judge. The petitioner without showing any document of title wants to get a declaration of title of the property in question by means of this writ petition.

8. A perusal of the impugned order would show that despite the several opportunities, the petitioner has not shown any document which would establish the title of the petitioner over the property in question. The order of the Commissioner therefore cannot be found fault with.

9. Writ Court cannot be used for getting declaration of title over property. Title can be established only by filing a civil suit before a Court of Competent Jurisdiction and by leading evidence. Title cannot be established or proved only by filing affidavits. Sale deeds in favour of the petitioner's father will not establish title of the property in question. The sale deed does not indicate whether after the death of the father of petitioner the property in question came to the petitioner.

10. The writ petition is therefore dismissed. However, in view of the fact that the petitioner has been in possession of the property under stay orders of this Court, the petitioner can approach the civil Court of Competent Jurisdiction by filing an appropriate suit. The stay order granted by this Court dated 23.03.2009 in M.P.No. 1 of 2009 is extended for a further period of eight weeks from the date of receipt of copy of this order to enable the petitioner to initiate appropriate proceedings in Court of Competent Jurisdiction and get orders. Be it noted that this Court has not expressed any opinion regarding the merits of the case.

11. Hence, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

gsp

To

1.The Commissioner,  
Pondicherry Municipality,  
Puducherry.-01.

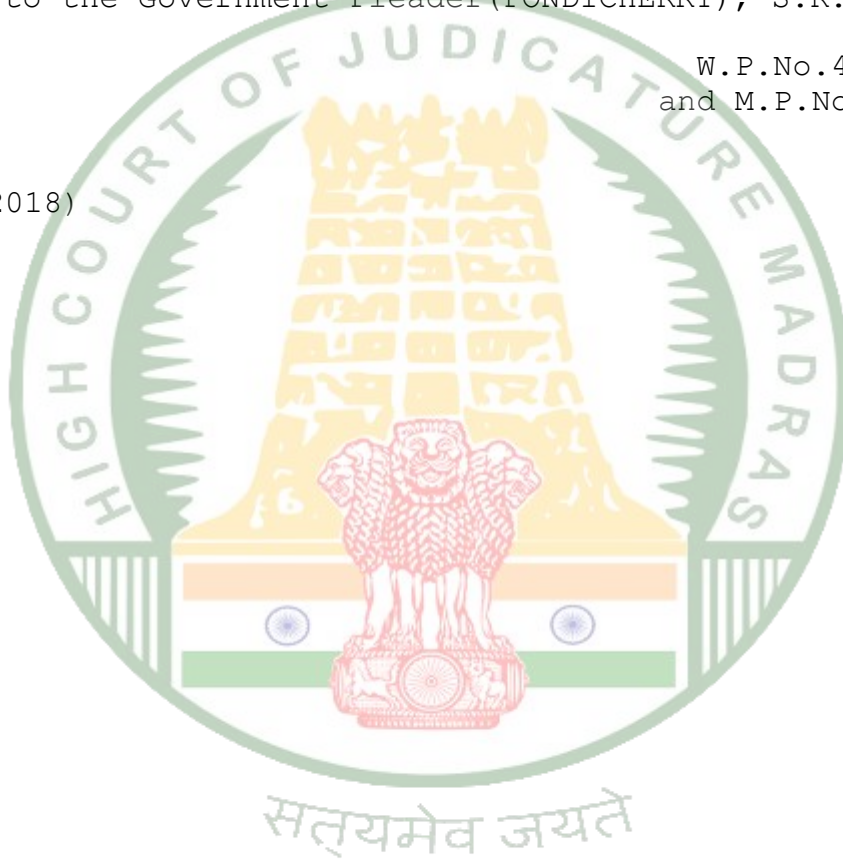
2.The Revenue Officer-I,  
Pondicherry Municipality,  
Puducherry.-01.

+1cc to Mr.ELIZABETH RAVI, Advocate, S.R.No. 53677

+1cc to the Government Pleader(PONDICHERRY), S.R.No. 53776

W.P.No.4170 of 2009  
and M.P.No. 1 of 2009

PVS (CO)  
TR(23/08/2018)



WEB COPY