

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2018

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.18596 of 2008 and
M.P.No. 1 of 2008

Balachandar

.. Petitioner

Versus

1. The Tashildar cum Executive Magistrate,
Taluk Office, Puducherry

2. Iyyappan

.. Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the file of the 1st respondent in proceedings No.3621/TOP/DS/2008 dated 30.06.2008 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V. Raghavacharii

For Respondent - 1 : Mr.J. Kumaran
Government Advocate (Pondichery)

For Respondent - 2 : T.S.Baskaran

ORDER

The petitioner has prayed for issuance of a Writ of Certiorari to call for the records on the file of the 1st respondent in proceedings No.3621/TOP/DS/2008 dated 30.06.2008 and to quash the same as illegal, incompetent and without jurisdiction.

2. The case of the petitioner is that the property at New Door No.106, old No.73 and 4/46 comprised in R.S.No.45/88 cada street No. 119 pt. measuring 1140 square feet belongs to him and he was in occupation and enjoyment of the property for more than two decades. Previously, the father of the petitioner had

residing with the petitioner in the said premises and since, there was some difference of opinion he left and residing with the petitioner's sister. The first respondent has issued a notice to conduct an enquiry based on the petition filed by one Iyappan/second respondent, who has sought to restore the land at R.S.No.45/88 of Ariankuppan Avenue. The allegation against the petitioner was that he has encroached the said property, but the fact is that the property does not belong to the petitioner. The second respondent had further claimed that he is the owner of the property and he got right by a sale deed executed by the petitioner's sister namely one Tmt.Gajalakshmi. But, after verifying it is made clear that petitioner's father had executed a sale deed in favour of petitioner's sister and she inturn had executed a sale deed in favor of one Nagarajan and the said Nagarajan had executed power of attorney in favour of the 2nd respondent. The petitioner had received all summons and filed his objections narrating the entire events and both the parties had appeared for the enquiry. The first respondent had passed the impugned order on 30.06.2008 calling upon the petitioner to vacate the premises if not the second respondent may file a complaint in the nearby police station. The reason given by the first respondent is that the second respondent herein had produced documents to establish their claim, but the petitioner has not produced any evidence to substantiate his part. The first respondent has acted beyond the scope of his powers and it could be seen that he had deputed a surveyor to visit the premises and at the time of visiting, the premises was locked and the first respondent had arrived at a conclusion that the petitioner had trespassed into the premises due to the absence of record to establish the fact. In the said complaint there was no witness, that the petitioner has encroached the property. The petitioner's plea is that he was in occupation for 2 decades and it was known to the 2nd respondent and his vendor. The first respondent without even analysing the facts had passed an impugned order. Aggrieved by the order of the first respondent the petitioner has challenged this writ petition on the following three grounds:

a. When the issue involved is not within the domain of the 1st respondent, he ought not to have entertained the petition.

b. When the writ petitioner challenges the validity of the document executed by Subramanian it falls within the jurisdiction of the Civil Court.

c. The 1st respondent is bound by the statute and it is expected to reject the petition filed at the instance of 2nd respondent at threshold.

3. The learned counsel for the petitioner would contend that the issue involved here is within the scope and ambit of

the Civil Court and the first respondent is not a competent authority to decide the case.

4. The learned counsel for the petitioner would further contend that, since the first respondent did not direct the petitioner to vacate the disputed premises and only advised to vacate the premises, since, he himself during the course of enquiry, has admitted that her sister is the owner of the property, and he has requested the second respondent to sell the property to him since, it is his ancestral property, he had spent huge amount in renovating the house, the second respondent in turn has said that he is ready to sell the property to the petitioner for a sum of Rs.20,00,000/- (Twenty Lakhs Only) and the petitioner had admitted to accept Rs.10,00,000/- (Ten Lakh Only) as compensation to vacate the disputed premises by a written statement on 26.06.2008.

5. The learned counsel for the petitioner would also contend that the petitioner had never challenged the validity of the documents executed by his father and did not raise any objections regarding the Government Order and just trying to dispute the same on merits.

6. The learned Government Advocate appearing for the first respondent would submit that he has filed a counter, wherein he gives a finding that the property in dispute does not belong to the petitioner and when the petitioner was 13 years of age, he was occupying the house with his parents, but not produced any documents or evidence in support of his claim and his sister Tmt. Gajalakshmi has purchased the said property from his father.

7. The first respondent received the written objections dated 15.05.2008 from the second respondent and the same was addressed to the Collector, Department of Revenue and Disaster Management, Puducherry and a preliminary notice has been served to the petitioner on 17.06.2008, to give him an opportunity to prove his right over the said property and the petitioner was aware that the property has already been sold by his father to his sister and she in turn sold the same to the Nagarajan, who appointed the 2nd respondent as General Power of Attorney for the said property and it is clear that the property does not belong to the petitioner and he himself admitted the said fact.

8. With regard to the G.O.Ms.No.104 dated 16.11.2007 issued by the Additional Secretary (Revenue), Puducherry, an Administrative Advisory committee has been constituted in the Taluk/Sub Taluk level, the Chairman of the committee is the Tahsildar, Taluk Office or Deputy Tahsildar, Sub-Taluk Office, as the case may be and based on the G.O, both the parties have

been called upon to prove their claim over the property. The Tahsildar did not adjudicate any title or any matter in this case, he is aware that only the Civil Court has the powers to adjudicate the title over properties. The petitioner never disputed the legality of title and therefore adjudication of any title or matter does not arise and therefore, nothing has been perused towards adjudication of any title or any matter in this case

9. Since, lot of land grab activities are reported in puducherry, the Government of Puducherry, has made an Advisory committee under the head of Tahsildars of Taluk Offices to guide/advise the innocent people the way how to settle their disputes either through Civil Court or through police. No orders have been issued as alleged by the petitioner. As per the G.O.Ms. 104, dated 16.11.2007 the 1st respondent has conducted the enquiry and he has only advised the petitioner to vacate the premises, for which the petitioner is raising the issue of Jurisdiction.

10. The last para of the impugned order is extracted hereunder :

In the light of the above it is ascertained that Thiru.Nagarajan. s/o. Kannappan had purchased the land and building from the sister of the petitioner through proper sale deed. The counter petitioner had trespassed into the house without valid title deed. He is well aware of the facts that his father has already sold out the property through a valid sale deed and he has already signed as witness in the sale deed. Occupying the sold out property without valid document is an act of Criminal trespass. Therefore, the counter petitioner is hereby advised to vacate the premises otherwise the petitioner may file a complaint in the nearby police station.

11. It could be seen from the counter affidavit filed by the first respondent that the Tahsildar has conducted an enquiry based on G.O.M.S.No. 104 dated 16.11.2007 and the said G.O is extracted hereunder:

It has been brought to the notice of the Government that on many occasions private disputes over the title and/or possession of landed properties have disturbed the law and order situation, which may not be effectively settled by police authorities, in as much as these disputes are civil in nature. In the law and order meeting conducted by the District Collector, Puducherry, this problem was discussed in length with the officers of Police and Revenue Department. Based on the deliberations, District

Collector, Puducherry has submitted a proposal to constitute an Administrative Advisory Committee at Taluk / Sub-Taluks level, to deal with civil disputes. The proposal was carefully considered by the Government.

The lieutenant Governor of Puducherry is pleased to constitute Administrative Advisory Committee in the taluks/Subtaluks, the composition of which will be as follows:

- i. Tahsildar, Taluk office or Deputy Tahsildar, Sub-Taluk Office-Chairman
- ii Sub-Registrar - concerned- Member
- iii. Taluk/ Sub - Taluk Surveyor-Member
- iv. The Station House Officer Concerned - Special Invitee

The scope and functions of the committee will be as follows:

- i. The Committee will examine all the private disputes relating to landed properties including those referred by the station House Officers by calling the parties for enquiry, examining the documents, government records etc., and measuring the disputed properties.
- ii. The committee will render appropriate advice to the parties in dispute, so that the law and order is maintained in the jurisdiction of the concerned SHO.
- iii. In case of dispute over possession of the property, the matter may be referred to the Sub-Divisional Magistrate to proceed under Section 145 Cr.Pc. In the event of dispute over title, the parties may be advised to approach the concerned civil Court under whose jurisdiction the matter fails.
- iv. The services of the Puducherry legal services authority may also be utilized to settle the problem amicably and for this purpose, the committee will function as a facilitator.

The functioning of the committee will be monitored by the respective Sub-Divisional Magistrate and the District Magistrate will also be duly kept informed in respect of all cases including action taken report by the committee.

12. But, the first respondent has not adhered the conditions formulated in the above G.O and has violated the same and he is not the authority to decide the Civil dispute hence,

the matter ought to have been referred to the appropriate Civil Court.

13. Therefore, the impugned order passed by the first respondent is beyond his powers and this cannot be accepted. The first respondent ought to have passed the order stating that he has no power to pass orders in this matter and the matter should be referred to the appropriate Civil Court. Therefore, the parties are at liberty to approach the concerned Civil Court for appropriate remedy.

14. With the above observations, this writ petition is disposed of with liberty to the petitioner to move the concerned Civil Court for appropriate relief as per law. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

smn

To.

The Tashildar cum Executive Magistrate,
Taluk Office, Puducherry

+1cc to Mr.T.S.Baskaran, Advocate SR.No.50564

+1cc to Mr.V.Raghavachari, Advocate SR.No.50664

+1cc to Public Prosecutor for Pondicherry SR.No.57020

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SPD(CO)
GMY (21/02/2019)

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