

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.32385 of 2018

S.Jayadeepa

.. Petitioner

Vs.

1. Union Territory of Puducherry,
rep. By its Chief Secretary,
Secretariat,
Puducherry.
 2. The Secretary,
Department of Town & Country Planning,
Government of Puducherry,
Puducherry.
 3. M/s.Pondicherry Slum Clearance Board
rep. by its Managing Director,
Shop No.106, Palli Vaasal Street,
Near Amman Koil,
Periyar Nagar, Orleanpet,
Puducherry-605 005.
- ... Respondents

Prayer : Writ petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent herein to dispose the representation of the petitioner dated 30.10.2018 within stipulated time frame.

For Petitioners : Mr.T.Sathiya Moorthy

For Respondents : Mr.D.Ravichander,
Additional Government Pleader (Pondy)

O R D E R

The prayer of the petitioner is to direct the first respondent to dispose her representation dated 30.10.2018 within a time frame.

2. The petitioner purchased the petition mentioned property measuring 2075 sq. ft. vide the registered sale deed dated

11.12.2013 registered as document No.6399 of 2013. Upon application, she was given planning permission to develop the property. The properties adjacent to the said property are owned by the second and third respondents. Since it was felt that the development of the petitioner's property would cause hindrance to the said properties, it was proposed to exchange the said land with the said respondents for the benefit of the public and the petitioner was asked to file an affidavit of undertaking qua the exchange, which was complied with by her on 27.12.2016. Even after about two years, there is no progress in the exchange process on the part of the respondents. Since the planning permission obtained by the petitioner also going to expire, she gave representation dated 30.10.2018, which also did not yield any fruit. Hence, the petitioner is before this Court.

3. Heard Mr.T.Sathiya Moorthy, learned counsel for the petitioner and Mr.D.Ravichander, learned Additional Government Pleader (Puducherry) appearing on behalf of the respondents.

4. It is the contention of the learned Additional Government Pleader (Puducherry) that the respondent sought approval from the Central Government for the exchange, which is awaited resulting in delay.

5. The learned counsel for the petitioner contended that the Puducherry Government can dispose of a land within its jurisdiction in accordance with the provisions of the Constitution. He placed reliance on the decision of the Hon'ble Apex Court in Villianur Iyarkkai Padukappu Maiyam V. Union of India, (2009) 7 SCC 561, wherein, it was held as follows :

"195. This Court finds that Section 5 is the provision by which all properties and assets, which earlier vested in the French Republic, stood transferred to the Union, i.e., Union of States (India). In other words, Section 5 was enacted for the purpose of transfer of properties from one sovereign State to another sovereign State. It has no power on the right of Government of Pondicherry over the properties and assets in Pondicherry. The vesting of land from French Republic to the Republic of India can have no bearing on the powers of Government of Pondicherry to dispose of land in accordance with the provisions of the Constitution."

6. The Hon'ble Apex Court in the said decision, while dealing with Section 5 of the Pondicherry (Administration) Act, 1962, held that it has no power over the properties and assets in Pondicherry and the said provision has no bearing on the powers of the Government of Pondicherry to dispose of the land in accordance with the provisions of the Constitution.

7. In view of the categorical pronouncement of the Hon'ble Apex Court, the petitioner cannot be asked to wait for years together to develop her property.

8. In the result, the writ petition is allowed. The first respondent is directed to consider the representation of the petitioner dated 30.10.2018 and pass appropriate orders directing exchange of land sought for by the petitioner for the benefit of general public. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary,
Union Territory of Puducherry,
Secretariat, Puducherry.
2. The Secretary,
Department of Town & Country Planning,
Government of Puducherry,
Puducherry.
3. The Managing Director,
Pondicherry Slum Clearance Board
Shop No.106, Palli Vaasal Street,
Near Amman Koil,
Periyar Nagar, Orleanpet,
Puducherry-605 005.

+lcc to Mr.T.Sathiyamoorthy, Advocate Sr.87990
+lcc to the Government Pleader Sr.87309

W.P.No.32385 of 2018

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srg 25/01/2019