

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.890 of 2019 and
W.M.P.Nos.996 to 998 of 2019

1 Muthu Anjali
2 Muthu Senthilkumar .. Petitioners

vs.

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

2 Sadhasivam @ Babu .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the impugned order dated 20.12.2018 passed by the 1st respondent under sub-section 2 of 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 action in respect of the lands comprised in Cadastre Nos.1747³/₄, 1748³/₄, 1747 2/4, 1748 2/4, 1747¹/₄ 1748¹/₄ relating to R.S.Nos.271 situated at Thattanchavadi Village, Oulgaret Taluk and Commune, Puducherry Union Territory, without following the procedure contemplated under the Public Premises (Eviction of Unauthorized Occupants Act) 1971 in pursuance of the impugned order.

For Petitioners :Mr.S.M.Muralidharan

For Respondents :Mrs.N.Mala

Addl. Govt. Pleader - For - R1
Not Ready in Notice - for R2

O R D E R

(Order of the Court made by The Hon'ble Chief Justice
and M.DURAI SWAMY,J.)

The above Writ Petition has been filed by the petitioners to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 20.12.2018 passed by the respondent No.1 under sub-section 2 of section 5A of The Public Premises (Eviction of Unauthorized Occupants Act) 1971, to quash the same and consequently direct the respondent not to take any action in respect of the lands comprised in Cadastre Nos.1747³/₄, 1748³/₄, 1747 2/4, 1748 2/4, 1747¹/₄ 1748¹/₄ relating to R.S.Nos.271 situated at Thattanchavadi Village, Oulgaret Taluk and Commune, Puducherry Union Territory, without following the procedure contemplated under the Public Premises (Eviction of Unauthorized Occupants Act) 1971 in pursuance of the impugned order.

2. It is the case of the petitioners that they are co-owners of the properties and the respondent No.1, without hearing them has passed the impugned order by ordering notice to some third party, who is no way connected with the properties. According to the petitioners, they have valid title over the properties and therefore, the respondent No.1 cannot proceed with the eviction proceedings.

3. By the impugned order dated 20.12.2018, the respondent No.1 found that the respondent No.2 is an encroacher and directed that the building be removed from the public premises and also directed the respondent No.2 to pay a sum of Rs.20,000/- as cost of removal of the said building/structure from the said public premises as an arrear of land review.

4.1 The respondent No.1 filed a counter, wherein he has stated that Form-A Notice dated 18.06.2018 was served upon the respondent No.2, who is the encroacher of the public premises, calling upon him to appear on 25.06.2018 to produce the relevant documents and submit his explanation as he has unauthorizedly occupied the Government property by constructing a compound wall in R.S.No.271/1/B/2, measuring an extent of 00.10.85 H.A.Ca at Thattanchavady Revenue Village, Oulgaret Taluk, Puducherry. One Jayachandran, who is the Power of Attorney of the respondent No.2 made a representation before the respondent No.1 on 09.07.2018 stating that an extent of 00.16.40 H.A.Ca belongs to Tmt.Sellappa and out of that an extent of 00.03.00 H.A.Ca was acquired by the Government of Puducherry and the remaining land is in his possession. He has also mentioned that instead of recording the area as 00.16.40 H.A.Ca, it was wrongly mentioned as 00.11.50 H.A.Ca in the re-survey process. Further, the Power of Attorney has stated that the said land was partitioned among the legal heirs of late Tmt.Sellappa on 09.06.2003 and therefore, requested to drop the eviction proceedings.

4.2 The respondent No.1 conducted an enquiry on 25.06.2008 and issued Form - AA Notice to the respondent No.2 on 27.07.2018 under section 5A of the said Act calling upon the respondent No.2 to show cause as to why the encroachment made in the land should not be removed. However, the respondent No.2 failed to produce any relevant documents claiming ownership over the encroached land and the possession in the lands of the petitioners was unauthorized.

4.3 The respondent No.1, after ascertaining the ground realities through the jurisdictional Thasildar, passed a detailed order on 28.11.2018 holding that the partition was made for an extent of 00.13.07 H.A.Ca instead of available extent of 00.08.75 H.A.Ca and therefore, there is a clear encroachment in the Government land in R.S.No.271/1B/2.

5. It is pertinent to note that the eviction proposal was only in respect of R.S.No.271/1B/2, a Government land and it is not in respect of the petitioners' land in R.S.No.271/4B owned by them. While initiating the encroachment proceedings, the respondent No.1 noted that the respondent No.2, who is also the brother-in-law of the petitioners, is an encroacher of the Government land and accordingly a notice under Form-A dated 18.06.2018 was issued and he authorized one Jayachandran, his Power of Attorney to contest the proceedings. Even in the partition deed dated 09.06.2003, the respondent No.2 had signed the deed as the Power Agent of his wife Tmt. Adiparameswari, who has authorized him to sign the deed by virtue of power deed dated 12.12.1997, executed in France.

6. It is also pertinent to note that the respondent No.2, who is the brother-in-law of the petitioners, is also one of the family member, therefore, the contentions of the petitioners that they are not aware about the legal heirs of Muthu Arumugam and the eviction proceedings cannot be believed. The petitioners have suppressed their relationship with the respondent No.2

7. The respondent No.2 had already filed a Writ Petition in W.P.No.21253 of 2018 challenging the order dated 27.07.2018 passed by the respondent No.1 under Section 5A of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 in respect of R.S.No.271/4B, which was disposed of by the Division Bench of this Court, by order dated 30.08.2018. However, the present Writ petitioners had not approached the respondent No.1 in the eviction proceedings before filing the present Writ Petition. When the respondent No.2 and the petitioners are closely related, they could have very well intervened in the eviction proceedings pending before the respondent No.1 and put-forth their claim, instead, they watched the proceedings from outside and filed the present Writ Petition seeking to quash the

impugned order passed against the respondent No.2.

8. The petitioners, who have knowledge of the encroachment made by the of the respondent No.2 cannot step into his shoes and challenge the impugned order passed against him. In such view of the matter, the petitioners are not entitled to any relief in this Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

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

+1 CC to Mr.S.M.Muralidharan, Advocate sr 16692.

+1 CC to Govt. Pleader, Puducherry sr 16800.

W.P. No.890 of 2019 and
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SKV(CO)
SP(18/03/2019)

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