

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.06.2019

CORAM
THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 18423 of 2008
and
M.P. 1 of 2008

V.Omalingam

... Petitioner

Vs

The Union Territory of Pondicherry,
rep. by its Deputy Collector (Revenue),
Authorised Officers (Land Reforms),
Karaikal.

.... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondent, his men, servant or agent from in any way interfering with the rights of the petitioner in his land in Survey Nos.133/5A1, 133/1C1, 133/5A2pt and 133/1C2pt as not covered by the Gazette Notification in No.125, dated 10.09.2001 and without due process of law.

For Petitioner : Mr.S.P.Harikrishnan for La Law

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

O R D E R

This Writ Petition has been filed seeking a direction to forbear the respondent from anyway interfering with the rights of the petitioner in his land in Survey Nos.133/5A1, 133/1C1, 133/5A2 Part and 133/1C2 Part as not covered by the Gazette Notification No.125, dated 10.09.2001 without due process of law.

2. The case of the petitioner is as follows :-

The petitioner is the absolute owner of the property in Survey Nos.133/5A1, 133/1C1, 133/5A2 Part and 133/1C Part situated at Keezhakasakudi Village, Kottucherry Commune, Karaikal by way of registered Sale Deed dated 01.02.1993 vide document No.133/1993. The petitioner is in peaceful possession and enjoyment of the property by cultivating cashew nut crops and also put up a pond for irrigation purpose of the cultivating

crops. The total extent of the property is 1 hectare 62 ares. While being so, in the year 2005, the respondent and his men sought to disturb the possession of the petitioner over the land without furnishing any details as to rights of the respondent over the land. Aggrieved by the said illegal action, the petitioner has filed a suit against the respondent and his men restraining from interfering with the property in O.S.No.156 of 2005 on the file of Principal District Munsif, Karaikal. In the above suit, the respondent has filed a written statement came up with the strange defence that the entire property was taken over by the respondent under the provisions of Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (hereinafter called as 'Act, 1973'). Immediately thereafter, the petitioner has sought for the documents relating to the above Act, 1973 claimed by the respondent and the extraordinary gazette was relied on by the respondent in Notification No.125, dated 10.09.2001 revealed that none of the property was taken over under the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973. Hence, the petitioner having no other option except to approach this Court under Art. 226 of Constitution of India has filed the present Writ Petition.

3. Mr.S.P.Harikrishnan, learned counsel appearing for the petitioner would submit that the prayer in the Writ Petition seeking to forbear the respondent from proceeding against the petitioner under the notification. The learned counsel would further submit that when the land is not covered under the Act, 1973, the petitioner is entitled to enjoy the lands. Accordingly, he prayed for appropriate orders.

4. Per contra, Mr.D.Ravichander, Addl. Government Pleader (Pondy.) appearing for the respondent would submit that one of the item viz., 133/5A2 Part covered under the said notification dated 10.09.2001 is cited as item No.14. Apart from that, the entire survey number was taken over by the Pondicherry Government under the above said Act, 1973 and declared that the land is surplus land against the petitioner's vendor. He would submit that all those things were stated elaborately in the written statement filed in the suit in O.S.No.156 of 2005. The learned Addl. Government Pleader would also submit that the prayer in the suit and the prayer in the Writ Petition are one and the same and the petitioner has not filed the Writ Petition with clean hands. If at all, the petitioner is aggrieved, he has to challenge the land reforms proceedings initiated against the petitioner's vendor in the manner known to law. Without challenging the said notification, the filing of Writ Petition by the petitioner with the above said prayer is not maintainable. Accordingly, he prayed to pass appropriate orders.

5. On perusal of the records, it reveals that one of the survey numbers mentioned in the affidavit was already covered in

the notification and as per the written statement, the other survey numbers are also covered by the notification. No doubt, the survey number mentioned in the affidavit is not covered under the Act, 1973, and hence, the petitioner is entitled to enjoy the same. If it is covered under the Act, 1973, the only remedy available to the petitioner to challenge the proceedings initiated under the said Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973. Without challenging the said proceedings, the filing of Writ Petition before this Court is not maintainable. Accordingly, the Writ Petition stands dismissed. However, the liberty is granted to the petitioner to work out his remedy in the manner known to law. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

rpp

To

The Deputy Collector (Revenue),
Union Territory of Pondicherry,
Authorised Officers (Land Reforms),
Karaikal.

+lcc to the Government Pleader(Pondicherry), S.R.No.49879

W.P. 18423 of 2008
and
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BR(CO)

RRS (22/07/2019)

सत्यमेव जयते

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