

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).1462 of 2015
and
M.P.No.1 of 2015

V.Chithiraisenar

... Petitioner

VS

The Commissioner,
Mannadipet Commune Panchayat,
Tirubuvanai,
Pondicherry – 605 501.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 06.03.2015 passed in M.A.No.6 of 2014 on the file of the III Additional District Judge at Puducherry, confirming the order dated 10.10.2014 passed in No.12008/MCP/Rev/2014-15 on the file of the Commissioner, Mannadipet Commune Panchayat at Thirubuvanai, Puducherry.

For Petitioner

: Mr.S.Subbiah, Senior Counsel
for Mr.P.Raja

For Respondent

: Mr.G.D.Jearany,
Govt. Advocate (Pondicherry)

ORDER

The petitioner is directed against the impugned order dated 06.03.2015 passed by the III Additional District Judge, Puducherry in M.A.No.6 of 2014.

2.By the impugned order the II Additional District Judge has confirmed the order dated 10.10.2014 wherein reference No.12008/MCP/Rev/2014-15 passed by the respondent Commissioner of Mannadipet Commune Panchayat, Tirubuvanai, Pondicherry – 605 501.

3.The petitioner claims to be in a possession of the schedule properties through his ancestors for more than 100 years. This property was sought to be recovered from the petitioner by the respondent Commissioner of commune Panchayat vide notice dated 23.05.2014.

4.The notice issued by the respondent commissioner merely states that the property was ear-marked by Mannadipet Commune Panchayat for constructing building for housing, Anganvadi and fixing of HT stay for Transformer of Electricity Department,

Pondicherry and that the petitioner had trespassed and therefore was liable to be evicted from the premises under Section 247 & 248 of the Pondicherry Village and Commune Panchayat Act.

5.The petitioner replied to the above show cause notice. The respondent thereafter proceeded to pass impugned order dated 10.10.2014 and ordered eviction of the petitioner.

6.Aggrieved by the same, the petitioner preferred an appeal before the III Additional District Judge, Puducherry. There the petitioner produced documents questioning very basis on which the notice was issued. Primarily the petitioner questioned the jurisdiction of the respondent commissioner to issue notice under the provision of the aforesaid Act by stating that the land if at all to belongs to the Government and not to the said respondent Panchayat. It was further submitted that though the land in question was Nantham Poramboke property, the petitioner cannot be evicted under Section 247 of the Pondicherry Village and Commune Panchayat Act.

7.The learned senior counsel appearing for the petitioner drew attention to Ex.P.32 and Ex.P.33 filed before the lower Court,

wherein the respondent has categorically admitted that the property was only under the maintenance of the respondent commune Panchayat and that place has been selected for constructing building of Anganwadi based on the recommendation of the Constituency Member of Legislative Assembly and that the land in question was under the Control of Revenue Department and only they are empowered to take necessary action for removal of encroachments.

8.Mr.S.Subbiah, learned Senior Counsel for the petitioner drew my attention to the following decision of the Honourable Supreme Court and of this court:-

- i. **Promoter & Builders Assn. Of Pune vs Pune Municipal Corpn. And Others**, (2007) 6 SCC 143.
- ii. **Devinder Singh and Others vs State of Punjab and Others**, (2008) 1 SCC 728.
- iii. **M.V.Janardhan Reddy vs Vijaya Bank and Others**, (2008) 7 SCC 738.
- iv. **Chemplast Sanmar Limited vs The Appellate Authority, TamilNadu Pollution Control Board NCB-1, and Others**, 2008 (4) CTC 793.
- v. **Alphonse vs The Commissioner, Pondicherry Municipality, Puducherry -1, and Another**, 2009 (3) CTC 858.
- vi. **The Executive Officer, Kadathur Town Panchayat,**

Harur Taluk, Dharmapuri District vs V.Swaminathan and others, 2004 (3) CTC 270.

vii.**Suhas H.Pophale vs Oriental Insurance Company Ltd and its Estate Officer**, (2014) 4 SCC 657.

9.Referring to the first decision, the learned Senior Counsel for the petitioner submitted that the notice issued by the respondent on 23.05.2014 under Section 247 of the Pondicherry Village and Commune Panchayat Act, 1973 was without jurisdiction in as much as the respondent can issue notice only in respect of the property which belong to the Commune Panchayat. As the property in question did not belong to the Commune Panchayat, the notice was without jurisdiction.

10.The learned senior counsel similarly referred to the decision in **Devinder Singh and Others vs State of Punjab and Others**, (2008) 1 SCC 728 to buttress the point that if the notice was without jurisdiction it amounts colourable exercise of power and as a Government body, the respondent is bound by the procedure laid down in the statute must act within four corners thereof.

11.The learned Senior Counsel further submitted that the provision of Section 247 of the Pondicherry Village and Commune

Panchayat Act, 1973 is plain and simple and only plain meaning can be given. The property in question should belong to the panchayat premises for the respondent to issue notice.

12.It was submitted that admittedly as per Ex.P 32, E.P33, the property in question belonged to the Government and therefore the language of Section 247 cannot be strained to justify proceedings under the aforesaid Act.

13.In this connection the learned Senior Counsel for the petitioner also referred to the decision in **Union of India vs Hansoli Devi** (2002) 7 SCC 273, wherein it was held that it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the court to adopt a hypothetical construction on the ground that such construction is consistent with the object and policy of the Act.

14.The learned Senior Counsel further submits that the order of the learned III Additional District Judge, Puducherry has strained the language in Section 247 to justify the action taken up by the respondent Commissioner. The learned senior counsel further

submits that though the petitioner had given sufficient reasons in his reply/representation to the notice dated 23.05.2014, the order dated 10.10.2014 merely states that the petitioner was directed in vide letter dated 03.06.2014 to appear in person and produce such evidence/documents within 15 days and he appeared on 01.07.2014 and produced evidences which the undersigned found unsatisfactory.

15.However, there is no discussion in the order of the 1st respondent to the conclusion. Therefore, there is no gross violation of principles of natural justice.

16.The learned senior counsel also referred the decision of the bench of this Court in **Chemplast Sanmar Limited vs The Appellate Authority, TamilNadu Pollution Control Board NCB-1, and Others**, 2008 (4) CTC 793, wherein it was held that the order passed in violation of principles of natural justice which occurred before the original authority cannot cured before the Appellate Authority.

17.The learned counsel for the petitioner further submits that the orders passed by the respondent and the lower court are liable

to be set aside. The learned senior counsel also drew my attention to the decision in **Suhas H.Pophale vs Oriental Insurance Company Ltd and its Estate Officer**, (2014) 4 SCC 657, wherein while dealing with the provision of the Bombay Rent Control Act and the Public Premises Act in respect of the property that was rented out/leased, the Court held that the powers under the Public Premises Act cannot be invoked when the property in question was subject to the provision of the Rent Controller Act.

18. Drawing the parallel, the learned counsel submits that the invocation of provisions was without jurisdiction as the property in question did not belong to the respondent panchayat commune even though the respondent is at liberty to initiate the proceedings in accordance with law as per the Pondicherry Public Premises Act.

19. The learned senior counsel also drew my attention to the decision arising from the provision of the Pondicherry Municipalities Act, 1973 rendered in **Alphonse vs The Commissioner, Pondicherry Municipality, Puducherry -1, and Another**, 2009 (3) CTC 858, wherein it was held that even if the petitioner fails to give his explanations to the show cause notice and even if he fails to attend the personal hearing, the commissioner was obliged to pass

a reasoned order. Further the court held that while exercising quasi-judicial functions, the authorities must record reasons in support of their conclusion, though it is not necessary to pass a lengthy order.

20.The learned counsel also referred to the decision of the Division Bench of this Court in **The Executive Officer, Kadathur Town Panchayat, Harur Taluk, Dharmapuri District vs V.Swaminathan and others**, 2004 (3) CTC 270, wherein the court has extracted the dictionary meaning of the expression 'Grama Natham' while dealing with the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 and Madras Land Encroachment Act, 1905. In paragraph 12, the Court has extracted the meaning of the word 'Grama Natham' which reads as under:-

Further, 'Grama Natham' is defined in the Law Lexicon as "ground set apart on which the house of village may be built". Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that it is a residential portion of a village; or portion of a village inhabited by the non-Brahmins; or land reserved as house sites; etc.

21. I have considered the submissions of the learned senior counsel for the petitioner and respondent. A Notice was issued to

the petitioner on 23.05.2014 under Section 247 of the Pondicherry Village and Commune Panchayat Act, 1973.

22.It spells out the grounds on which the respondent commissioner has come to a conclusion that the petitioner should be evicted. The petitioner had given his reply. The respondent has thereafter asked the petitioner to vacate the premises within 10 days vide Notice dated 13.06.2014 followed by an eviction order dated 10.10.2014 which unfortunately bears no discussion. Meanwhile, the petitioner has obtained information under RTI

23.Further appeal before The lower Court proceeded on a totally different forty all together in the appeal before it in as much as, the court has concluded that the property in question was a 'Natam Poramboke Land' and was under the control of the Revenue Department and therefore the Government can take up the same for development purpose. It was further stated no patta was issued to the petitioner's ancestors and therefor the petitioner was illegally in possession of 425 sq.ft land in R.S.No.24/39. Be that as it may, it is noticed that the basis on which the proceedings were initiated and were confirmed are in variance with the notice.

24.The respondent ought to be issued with a proper notice particularizing the basis on which petitioner was to be evicted whether under the provisions of Pondicherry Village and Commune Panchayat Act or Public Premises Act or any other Act. The notice should have spelt out the details/grounds on which the petitioner was liable to be evicted. No reasons have been given as to why the Exs.P32 & P33 are not relevant. The respondent while passing order dated 10.10.2014 has not given any reason to justify the same.

25.Therefore, I am inclined to allow the present Civil Revision Petition by setting aside the impugned order while giving liberty to the respondent commissioner and other authorities in the commune Panchayat to initiate an appropriate proceedings to evict the petitioner in accordance with law after complying with the principles of natural justice. Liberty is given to the respondents to proceed against the petitioner under the provisions of the Pondicherry Village & Commune Panchayat Act, 1973 by issuing a corrigendum to notice dated 23.05.2014 or in the alternative issue a fresh notice. This order is without prejudice to the rights of the Government and/or to respondent invokes the machinery under any other law to evict the petitioner in accordance with law.

C.SARAVANAN.,J.

jen

26.The Civil Revision petition is allowed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

05.08.2019

Index:Yes/No
Internet :Yes/No

jen

To

- 1.The III Additional District Judge, Puducherry.
- 2.The Commissioner,
Mannadipet Commune Panchayat,
Tirubuvanai, Pondicherry – 605 501.
- 3.The Section Officer, V.R.Section,
High Court, Madras.

WEB COPY

C.R.P.(NPD).1462 of 2015

and

M.P.No.1 of 2015