

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE R. MAHADEVAN

WMP.No.17167 of 2017
in
in W.P.No.10047 of 2014

R.Selvaraj .. Petitioner

Vs.

1.S.Murali

2.The District Collector
Office of the District Collector
Cuddalore District, Cuddalore

3.The Tahsildar
The Panruti Taluk Office
Panruti 607 106
Cuddalore District

4.M.Thanikachalam

5.The Commissioner
Nellikuppam Municipality
Cuddalore

.. Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, seeking to recall the order dated 11.07.2016 made in W.P.No. 10047 of 2014.

Prayer in WP.No.10047 of 2014 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to direct the respondents 1 and 2 to remove the encroachment made by the respondents 3 and 4 at Thanthai Periyar Street on the southern side of Cuddalore - Chittor Road (Near Post Office Bus Stop) Nellikuppam Town Panruti Taluk Cuddalore District.

For Petitioner	: Mr.S.R.Sundar
For Respondents	: Mr.S.Ganesh for R1 Mr.K.Ravi Kumar Additional Government Pleader (R2 & R3)

ORDER

[Order of the Court was delivered by T.S.Sivagnanam, J.]

This petition has been filed for recalling the order dated 11.07.2016 passed in W.P.No.10047 of 2014.

2. Heard Mr.S.R.Sundar, learned counsel for the petitioner and Mr.S.Ganesh, learned counsel for first respondent and Mr.K.Ravikumar, learned counsel for second and third respondents.

3. The ground on which the petitioner seeks for recalling the order is that the property in the occupation of the petitioner herein dwelling in Nellikuppam Municipality and suppressing the same, the first respondent filed a writ petition designed as Public Interest Litigation alleging that the petitioner has encroached the Government Property. The writ petition was disposed of to take appropriate action.

4. When the Tahsildar issued notice to the petitioner, the petitioner appeared before the Tahsildar on 10.01.2017 and stated that the land is owned by the Municipality and he had filed a suit in O.S.No.678 of 1996 on the file of District Munsiff Court, Panruti and obtained a permanent injunction against the Municipality dated 28.11.2003 and the appeal filed by the Municipality in A.S.No.4 of 2004 before the Sub-Court Panruti was dismissed by a judgment and decree dated 12.07.2004 and therefore it is submitted that review could not have been initiated.

5. It is not in dispute that pursuant to the notice issued by the Tahsildar dated 09.01.2017, the petitioner has been evicted from the premises and the bunk shop has also been demolished.

6. The learned counsel for petitioner would vehemently contended that the effect of the Civil Court decree is required to be considered and this legal issue was answered by the Full Bench of this Court in the case of Ramaraju Vs. State of Tamil Nadu [reported in (2005) 2 CTC 741]. He further contended that when the petitioner has obtained a decree from the Civil Court, he could not have been evicted in a summary manner.

7. The petitioner does not have any document of title in support of his claim. There is no revenue records to support the petitioner's lawful occupation of the premises. Electricity card and levy of licence fee cannot confer title on the petitioner nor legalise the alleged possession.

8. Thus, we are of the considered view that the petitioner has not made out any ground to recall the order.

9. Our above view is fortified by the decision in the case of Zahara BI and ors. Vs. Sheid Dawood and Anr. [reported in (1966) Indian Law Reports 550] and in the case of Veeriah Asari Alias Veerachari Vs. The Salem Municipality & anr. [reported in (1992) 2 Law Weekly], where it has been held as follows:

"7. Even assuming that there was a lease in favour of the plaintiff, it was not valid in law. The Municipality is certainly not entitled to lease out a street poramboke land to any party when the land is intended only to be used for the purpose of street. The Municipality has no power to convert the user and allow any party to use it for any other purpose. The position of law has been clearly set out in Zahara Bi Vs. Sheik Dawood. The law has been very clearly elucidated by the learned Judge and it is pointed out that a street has to be used only as a street and the Municipality cannot put it to a different user. It is also pointed out that any member of the public can compel the Municipality to use it as a street. In this case admittedly it is a street and it is not open to the Municipality to lease out the same to the plaintiff for having his superstructure.

12. Under Section 182 of the Act, the executive authority may require the owner or occupier of any premises vested in the Municipality to remove or alter any projection, encroachment or obstruction in or over any street. Under Sub-Section (2) of Section 182, if the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto, then the Municipality Council shall make reasonable compensation to such person, who suffers damage by the removal or alteration of the same. In the present case, the plaintiff cannot claim that he has been in possession for a period which would in law be sufficient to give a prescriptive title. No doubt, he has been in possessing from 1957. But his possessing has been admittedly with the permission of the Municipality from 1959. He himself places reliance on Exts. A3, A6 and other documents referred to already. When his possession is with the permission of the Municipality, it cannot be treated as adverse and the plaintiff can never claim prescriptive title of the property. In fact, the only case put forward in the plaint is that of possession, which had ripened into prescriptive

title. The evidence let in by the plaintiff himself disproves his case.

18. It is the duty of the Municipality to comply with the provisions of the Statute, as found in Sections 182 and 183 of the Act and no Court can grant an injunction restraining the Municipality from exercising its functions which are enjoyed by a Statute. In the circumstances, the present suit is not sustainable and the plaintiff is not entitled to get any relief. Consequently, the judgment and decree of the lower appellate Court dismissing the suit are unassailable and that the second appeal fails and is dismissed. However, there will be no order as to costs."

10. For the above reasons, this recall application stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector
Office of the District Collector
Cuddalore District
Cuddalore.

2.The Tahsildar
The Panruti Taluk Office
Panruti 607 106
Cuddalore District.

3.The Commissioner
Nellikuppam Municipality, Cuddalore

+1cc to Mr.K.Moorthy, Advocate Sr.No.64553
+1cc to Mr.S.Ganesh, Advocate Sr.No.64743
+1cc to The Government Pleader Sr.No.65054

AKM/27.09.2019

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in W.P.No.10047 of 2014