

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No. 12337 of 2020

R.Karunamoorthy ... Petitioner

Vs

The Commissioner,
Oulgaret Municipality,
Puducherry. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in F.No.51-91/JE(3)/OM/2018-19 dated 12.05.2020 on the file of the first respondent and quash the same.

For Petitioner ... Mr.S.C.Vishwanth

For Respondent .. Mr.D.Ravichandran,
AGP (Puducherry)

ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J.)
(Through Video Conferencing)

The petitioner claims to have purchased a land in Plot No.6 belonging to one Kalaiselvi out of a larger extent of land in S.No.123/12A of Chinnakalapet Village, through a registered sale deed dated 28.08.1996. The petitioner, after purchasing the land to an extent of 1800 sq. ft., had set up a super-structure of 1100 sq. ft., consisting of ground floor and in the year 2015 constructed the first floor and the said fact has also been informed to the respondent on 20.02.2019.

2. The petitioner was issued with a notice under Form-A by the respondent by invoking Section 45 (1) of the Puducherry Municipalities Act, 1973, stating among other things, that the petitioner is under unauthorized occupation of the municipal

premises mentioned in the schedule, and, therefore, asked to show cause to the said notice.

3. The petitioner responding to the same, has submitted his reply dated 30.04.2019. The respondent issued a Form-B notice under Section 416(1) of the Puducherry Municipalities Act, 1973, stating among other things, that in exercise of powers under the said provision, the petitioner shall vacate the premises within thirty-five days of the date of publication of the order and also indicated the consequence of not obeying the said order. The petitioner in response to the said communication has also submitted his representation dated 08.06.2020 in-person.

4. Learned counsel appearing for the petitioner has drawn the attention of the Court to Sections 415 and 416 of Puducherry Municipalities Act, 1973, and would submit that though sub-section(1) of Section 416 mandates the consideration of the representation and reasonable opportunity of being heard, the said provision is not at all being complied with and prays for interference.

5. Per contra, Mr.D.Ravichandran, learned counsel who accepts notice on behalf of respondent, would submit that since the petitioner is having an effective alternative remedy under Section 420 of the Puducherry Municipalities Act, 1973, the present writ petition, per se, is not maintainable and would further add that the reply to the show cause notice is bereft of any materials, and prays for dismissal of the writ petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed before us.

7. It is relevant to extract Section 416 of the Puducherry Municipalities Act, 1973:-

"416.Eviction of unauthorised occupants - (1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 115 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Commissioner is satisfied that the municipal premises are in unauthorised occupation, the Commissioner may, on a date to be fixed or the purpose, make an order of eviction for reasons to be recorded therein directing that the municipal premises shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the municipal premises.

(2) If any person refuses or fails to comply with the order of eviction within thirty-five days of the date of its publication under sub-section (1), the Commissioner or any other officer duly authorised by the Commissioner in this behalf may evict that person from, and take possession of, the municipal premises and may, for that purpose, use such force as may be necessary."

8. A perusal and consideration of the materials would disclose, among other things, that the petitioner, in response to the show cause notice dated 05.04.2019 issued by the respondent, has submitted his reply dated 30.04.2019 and the respondent has passed the impugned order by invoking Section 416 (1) of the Puducherry Municipalities Act, 1973.

9. In the considered opinion of this Court, the impugned order appears to be in a standardized format and despite the fact the petitioner has submitted his response dated 30.04.2019, which was also acknowledged by the local body on 30.04.2019, the consideration of the reply have not been reflected in the impugned order and hence on the sole ground, it warrants, interference.

10. In the result, the impugned order dated 12.05.2020 passed by the respondent is set aside and the matter is once again remitted to the respondent to take into consideration the reply dated 30.04.2019 submitted by the petitioner and pass appropriate orders in the light of the said statutory provisions, as expeditiously as possible, and not later than six weeks from the date of receipt of a copy of this order / uploading of the order in the website and communicate the decision taken, to the petitioner.

11. Hence, the writ petition is partly allowed. No Costs. Consequently, connected W.M.P.No. 15176 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To
The Commissioner,
Oulgaret Municipality,
Puducherry.

+1cc to Mr.S.C.Vishwanth, Advocate, sr no.6520

W.P.No. 12337 of 2020

RSI (CO)
RMP (03/03/2021)



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