



WEB COPY

W.P.No.2480



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

**THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU**

**W.P.No.2480 of 2022
and W.M.P.Nos.2637 & 2639 of 2022**

M.Balassoupramanien

... Petitioner

VS.

1.The Commissioner,
Puducherry of Municipality,
Puducherry.

2.The Executive Engineer,
Puducherry of Municipality,
Puducherry.

3.The Revenue Engineer-I,
Revenue Section-I,
Puducherry of Municipality,
Puducherry.

4.The Station House Officer,
Mudaliarpur Police Station,
Puducherry.

5.The Deputy Collector Revenue (North),
Revenue Department, Pondicherry.
(R5 suo motu impleaded vide order dt. 11.10.2022
made in W.P.No.2480/2022)

...



Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, after calling for the concerned records relating to the Order dated 27.01.2022 passed by the 3rd respondent and quash the same.

For Petitioner : Mr.M.Gnanasekar

For Respondent : Mr.T.P.Manoharan, Senior Advocate
for Mr.T.M.Naveen, for R1 to R3

Mr.V.Balamurugane
Additional Public Prosecutor (Pondy.)

ORDER

(Order of the court was delivered by R.Subramanian, J.)

Challenge is to the notice dated 27.01.2022 issued by the Puducherry Municipality directing the petitioner to vacate and handover possession of the land in T.S.No.25/3, which according to the Municipality belongs to it, within three days. This notice is issued by the Revenue Officer of the Puducherry Municipality. Though the learned counsel for the petitioner attempts to justify his possession of the land in question under one Selvi who have been favoured with certificate of residence and provided financial aid by the Puducherry Slum Clearance Board, we do not find sufficient documentary support for the said claim of the petitioner since the land that is stated to be in possession of Selvi bears a



different survey number viz., S.No.26. However, the occupation of the petitioner of the municipal land is admitted and Section 415 of the Puducherry Municipalities Act, provides the procedures for eviction of unauthorized occupation of municipal lands. The said provision reads as follows:

“Issue of notice to show cause against order of eviction.- (1) If the Commissioner is of opinion that any persons are in unauthorised occupation of any municipal premises and that they should be evicted, the Commissioner shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall, --- (a) specify the grounds on which the order of eviction is proposed to be made; and require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the municipal premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The Commissioner shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the municipal premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Commissioner knows or has reason to believe that



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any persons are in occupation of the municipal premises, then without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person in the manner provided in section 467.”

2.After issuance of notice contemplated under Section 415, the Commissioner is empowered to pass orders under Section 416. An appeal provision is also available under Section 420 to an Appellate Authority, who shall be a District Judge or a Judge not below the rank of a Subordinate Judge. The grievance of Mr.M.Gnanasekar, learned counsel appearing for the petitioner is that the procedure set out in the enactment for eviction of encroachment has not been followed.

3.Mr.T.P.Manoharan, learned Senior Counsel appearing for the Municipality would however contend that since the encroachment is of recent nature as per the judgment of the Hon'ble Supreme Court in ***Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and Others*** reported in ***(1997) 11 SCC 121***, wherein the Hon'ble Supreme Court while dealing with eviction of pavement dwellers held that if the encroachment is of a recent origin then the principles of natural justice cannot be insisted upon. The Hon'ble Supreme Court had observed as follows:



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...“If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting.”

4.No doubt no person has a right to encroach upon the municipal land or any other land meant for public purpose. If the Authority allows encroachment to take place, they will have to necessarily follow the provisions of the enactment which governs them to remove the encroachment also.

5.From the documents that have been produced particularly the photographs placed before us by the Puducherry Municipality itself, we are unable to conclude that the encroachment is of a recent origin. By the very nature of the construction as well as its physical appearance, we are convinced that the encroachment in question must have been there for a long time. Once the enactment viz., the Puducherry Municipalities Act enumerates the procedure for eviction of encroachers, we do not think that the Authorities could deviate from such procedure and issue the notices akin to the impugned notice that too by an Officer who is wholly unauthorized viz., the Revenue Officer and proceed with eviction. We are therefore compelled to interfere and allow the Writ Petition. The



Writ Petition will stand allowed and the impugned notice will stand quashed, leaving it open to the Municipality to take appropriate proceedings under Sections 415 and 416 of the Puducherry Municipalities Act, 1973 for eviction of encroachment. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.)

(K.B., J.)

07.11.2022

Index: no

Speaking order: Yes

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