



IN THE HIGH COURT OF JUDICATURE AT MADRAS

|             |               |
|-------------|---------------|
| Reserved on | Pronounced on |
| 21.02.2022  | 02.03.2022    |

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 25920 OF 2009

1. P.Radhakrishnan (Decd.)
2. Rajeswari
3. Vignesh
4. K.R.Vignitha

(Petitioners substituted as LRs  
of deceased P-1)

.. Petitioners

- Vs -

1. The District Collector  
Special Secretary to Government  
of Puducherry, Revenue Department  
Saram, Puducherry.
2. The Director  
Directorate of Survey & Land Records  
Saram, Puducherry.
3. The Tahsildar  
Oulgaret Taluk Office  
V.V.P. Nagar, Puducherry.
4. Tmt. Veronica
5. Arockia Mary

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the 2<sup>nd</sup> respondent in No.2987/2009/DOS/PP dated 30.03.2009 and the consequential proceedings in No.(6).8379/DOS/APP/2009 dated 04.12.2009 and quash the same and consequently forbear the respondents 1 to 3 from in any way holding any enquiry in petition No.2987/DOS/PP dated 26.02.2009 given by the 4<sup>th</sup> respondent on the question of title and possession of the property described in the schedule.



## SCHEDULE OF PROPERTY

Pondicherry R.D., Oulgaret Sub-R-D., within Oulgaret Municipality Limit, Village No.36, Reddiyarpalayam Revenue Village, Reddiyarpalayam Village at Mangan Street, Patta No.293, Re-Survey No.140/125, Cadastre No.112 part, measuring to an extent of East-West:18.06 Mtr., South-North(Eastern Side)38.6mtr, Western Side: 37 mtr., i.e., 7 acre 18 cent of 7740 square feet of vacant plot.

Boundaries: East of Arokiyanathar Temple Street, West of Manai Bearing Re-Survey No.140/126, North of land of Usiye Roamain and south of Mangan Street.

For Petitioners : Mr.T.V.Ramanujun, SC, for  
Mr. T.V.Krishnamachari

For Respondents : Mr. J.Kumaran, AGP for RR-1 to 3  
Mr. A.Jenasenan for R-5

## ORDER

The present petition has been filed by the petitioner to quash the proceedings of the respondents and the consequent direction for the petitioner to appear before the respondents for enquiry.

2. It is the case of the petitioner that the property in survey No.140/125, Reddiyar Palayam Revenue Village, Ulavarkarai Municipality, was purchased under a registered sale deed dated 8.8.2005 from one Mary Antoine David and since the date of purchase the petitioner has been in peaceful possession and enjoyment of the property. It is the further averment of the petitioner that his vendor had purchased the property from his vendor in the year 1992 and for more than 40 years, the petitioner and his vendor have been in possession and enjoyment of the property and the aforesaid fact has also been recorded before the Panchayatadars and registered as Document No.587 of 1988 before the Sub-Registrar, Ulavarkarai.

3. It is the further averment of the petitioner that the predecessor to the petitioner's vendor had obtained patta in Patta No.293 under sale deed dated 8.8.2005 and that the petitioner has been in possession of the schedule mentioned property since the date of purchase on 8.8.2005. It is the further averment of the petitioner that the 4<sup>th</sup> respondent, scheming to grab the property, obtained a power of attorney from



one Louis Philip Gnanaprakasam of Singapore, alleged to be dated 10.08.2007 and with the use of the said power of attorney, has created a sale deed, alleged to be dated 19.11.2008, in favour of the 5<sup>th</sup> respondent, her close relative, which document is sham and nominal. It is the further averment of the petitioner that though the sale consideration, as alleged in the sale deed is Rs.52,55,000/-, however, the sale deed contains false recitals to the effect that the possession of the property had been handed over to the 5<sup>th</sup> respondent. It is the further averment of the petitioner that the 4<sup>th</sup> respondent as well as Louis Philip Gnanaprakasam are total strangers to the property and that the general power of attorney does not speak about how the said Louis Philip Gnanaprakasam got title to the said property.

4. It is the further averment of the petitioner that respondents 4 and 5 have fabricated evidence with intent to grab the property of the petitioner. It is the further averment of the petitioner that without going to the civil court to establish her title, by filing a suit for declaration and recovery of possession, the 4<sup>th</sup> respondent has given a representation dated 26.2.2009 to the 2<sup>nd</sup> respondent alleging that she has sold the property to the 5<sup>th</sup> respondent for which notice dated 30.03.2009 was served on the petitioner for the enquiry to be held on 5.4.09. It is further averred that the petitioner appeared for the enquiry and gave his objections on 07.10.09 pointing out that the title and possession cannot be gone into by the 2<sup>nd</sup> respondent.

5. It is the further averment of the petitioner that he has filed a suit in O.S. No.1074 of 2009 on the file of the Principal District Munsif Court, Puducherry, against respondents 4 and 5 for permanent injunction restraining them from disturbing or interfering with his peaceful possession and enjoyment of the property along with I.A. No.2715 of 2009 for interim injunction in which notice has been ordered to the respondent. However, the 2<sup>nd</sup> respondent had sent a letter dated 4.12.09 calling upon the petitioner to appear before him on 11.12.09.

6. It is the further averment of the petitioner that respondents 4 and 5 are influencing the revenue authorities and pressurising the revenue officials, though they are not vested with any power to decide the title. It is the averment of the petitioner that title and possession can be decided only by the civil court in the suit filed by the petitioner, where respondents 4 and 5 can appear and agitate their rights.



7. It is the further averment of the petitioner that though the filing of the suit was brought to the notice of the 2<sup>nd</sup> respondent, however, without advertent to the same, the 2<sup>nd</sup> respondent had issued the notice of hearing, which is impermissible and shows utter non application of mind and, therefore, the present petition has been filed by the petitioner.

8. Learned senior counsel appearing for the petitioner submits that the act of the 2<sup>nd</sup> respondent is wholly arbitrary, illegal and perverse, as without waiting for the orders to be passed by the civil court, which alone has the jurisdiction to decide the title and possession to the property in dispute, the impugned notice has been passed.

9. It is the further submission of the learned senior counsel that the petitioner is possessed of the patta and has been in peaceful possession and enjoyment and the predecessor of his vendor as also his vendor were also possessed of title and were in enjoyment of the property. However, the 4<sup>th</sup> respondent, merely on the strength of the power of attorney, alleged to be executed by one Louis Philip Gnanaprakasam, all of a sudden in the year 2007, has come to the scene and has started executing the alleged sale deed in favour of the 5<sup>th</sup> respondent, who is none other than her close relative.

10. It is the further submission of the learned senior counsel for the petitioner that when the suit is pending, the issuance of a notice on the petitioner by the 2<sup>nd</sup> respondent to appear for enquiry is nothing but an act of undermining the authority of the civil court in deciding the title, which alone has jurisdiction and the 2<sup>nd</sup> respondent has no authority to decide the title and possession.

11. In support of his submissions, learned senior counsel appearing for the petitioner placed reliance on the following decisions :-

- i) Chockkappan & Ors. - Vs - State of T.N. (2004 (1) CTC 136);
- ii) Vishwas Footwear Company Ltd. - Vs - The District Collector, Kancheepuram & Ors. (2011 (5) CTC 94);
- iii) Sabina Detergents Pvt. Ltd. - Vs - Janabai & Ors. (2009 (3) CTC 770);
- iv) Dr.Dhanapathy - Vs - Union of India & Ors. (2021 (1) LW 552);
- v) V.Manikandamurthy - Vs - Union of India & Ors. (WP No.8239/2020 - Dt. 12.06.2020);



vi) R.Balasundaram Reddiar (Decd.) Thru LRs -  
Vs - Govt. of UT of Pondicherry & Ors. (WP  
No.24022/2012 - DATED 24.8.2021)

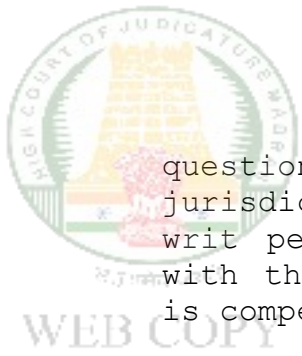
12. Per contra, learned counsel appearing for the 2<sup>nd</sup> respondent submitted that pursuant to a representation from the 4<sup>th</sup> respondent, to correct mistake regarding the name of ownership in the Settlement Record in respect of the aforesaid property, which carries the wrong entry of the petitioner, as alleged by the 4<sup>th</sup> respondent, the matter was taken up u/s 23 (1) (a) of the Pondicherry Settlement Act, 1970 and enquiry proceedings were initiated by issuing summons to persons, including the petitioner, in order to ascertain whether a bona fide mistake has been made as claimed by the 4<sup>th</sup> respondent.

13. It is the further submission of the learned counsel for the 2<sup>nd</sup> respondent that Section 23 (1)(a) of the Pondicherry Settlement Act empowers the Director or the Settlement Officer to enquire into the bona fide mistake by conducting appropriate proceedings. Further, Section 4 of the Pondicherry Settlement Act also gives powers to the Directors and Settlement Officers to summon and enforce the attendance of any person and also to examine by production of document in the enquiry proceedings. It is the submission on behalf of the respondent that the enquiry as contemplated under the Act is purely an enquiry to correct a bona fide mistake.

14. It is the further submission of the learned counsel for the 2<sup>nd</sup> respondent that under the Pondicherry Settlement Act, the Director is empowered and conferred with jurisdiction to issue summons and that u/s 25 (2) of the Pondicherry Settlement Act, the decision of the said authority shall be final and that no civil court shall have jurisdiction to decide or deal with any question which, by law, under the Act, is to be decided by the authorities. Only in the aforesaid scenario, the summons were issued. The said order having been passed by an authority, vested with jurisdiction and within the framework of law, the grievance of the petitioner is wholly unsustainable and the petitioner cannot canvass the relief sought for through the writ petition.

15. This Court bestowed its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

16. There is no quarrel with regard to the proposition of law that the writ court, though cannot adjudicate the disputed



questions, but when the challenge is on the ground of want of jurisdiction, the Court can very well entertain the same in a writ petition. In the case on hand, there cannot be quarrel with the fact that the authority, which has issued the notice, is competent and has jurisdiction to entertain the issue.

17. Coming to the issue proper, the whole case of the petitioner lies in the fact that he had purchased the property in the year 2005 from his vendor, who had purchased the property from his predecessor in the year 1992 and for more than 40 years, the petitioner, his vendor and the vendor's vendor had been in possession and occupation and had been carrying title all along, but curiously in the year 2007, through a power of attorney alleged to have been executed by one Louis Philip Gnanaprakasam, the 4<sup>th</sup> respondent, has sold the property to the 5<sup>th</sup> respondent and has also made representation to the revenue authorities for correction of the name in the revenue records. It is the case of the petitioner that the documents relied on by respondents 4 and 5 are fabricated documents, which cannot form the basis for the 2<sup>nd</sup> respondent to issue the impugned notice.

18. To give fillip to the said contention, the petitioner places much stress on the filing of the suit in O.S. No.1074 of 2009 for permanent injunction and also I.A. No.2715 of 2009 seeking interim injunction. The petitioner also stresses the fact that though respondents 4 and 5 claim title to the property, however, they have not filed any suit before the competent civil forum for declaration of title and possession; rather, they have gone before the revenue authorities for correction of the revenue records, which, they allege, carry the wrong name of the owner of the property, which according to the petitioner, cannot be adjudicated by the said authority.

19. In this regard, the 2<sup>nd</sup> respondent places reliance on Section 23 (1) (a) of the Pondicherry Settlement Act, which empowers the Director or the Settlement Officer to enquire into the bona fide mistake. At the time when the writ petition was filed, the 2<sup>nd</sup> respondent, invoking its powers under the Pondicherry Settlement Act, had caused notice calling upon the petitioner to appear for enquiry into the representation filed by the 4<sup>th</sup> respondent. The petitioner had rushed before this Court even at the very initial stage when notice was issued for the enquiry. Time and again, it has been repeatedly held that where notice of enquiry is put to test, unless there is a jurisdictional incompetency, Courts shall refrain from interfering with the notice.



20. It is to be pointed out that the 2<sup>nd</sup> respondent, based on the representation of the 4<sup>th</sup> respondent, had only called upon the petitioner to appear for an enquiry, in exercise of the powers vested u/s 23 (1)(a) of the Act. It is not the case of the petitioner that the 2<sup>nd</sup> respondent is not competent to issue the enquiry notice as the 2<sup>nd</sup> respondent is not vested with jurisdiction. All that the petitioner claims is that the petitioner has filed a suit in O.S. No.1074/2009, in which an order of interim injunction has been granted and, therefore, pending adjudication by the civil court, the 2<sup>nd</sup> respondent cannot pass any orders, as the 2<sup>nd</sup> respondent is not vested with power to decide the title.

21. There is no quarrel on the proposition of law pointed out by the learned senior counsel for the petitioner. However, it is to be pointed out that based on the powers conferred u/s 23 (1)(a), the 2<sup>nd</sup> respondent is exercising its power to correct a bona fide mistake, if it had crept in, subject to proper appreciation of the materials to be placed before him. Mere correction of the records would not absolve the civil court from deciding the case. Further, it is also to be pointed out that the suit filed by the petitioner is not for declaration of title, but it is only for permanent injunction. Therefore, when the petitioner himself has not filed any suit for declaration of title, it does not lie in the mouth of the petitioner to claim that the avers that the 4<sup>th</sup> respondent has not filed any suit claiming declaration of title. The relief sought for by the petitioner is only permanent injunction and not declaration of title. That being the admitted position, as revealed factually, the act of the 2<sup>nd</sup> respondent in calling upon the petitioner to attend the enquiry for arriving at a subjective finding cannot be found fault with.

22. If at all the petitioner has any grievance with regard to the ownership of the property, which is in dispute, the course available to the petitioner is to file appropriate suit claiming appropriate relief before the court of competent jurisdiction. However, without doing so, the petitioner cannot come before this Court for a direction to the 2<sup>nd</sup> respondent not to conduct any enquiry, when a procedure is contemplated u/s 23 (1)(a) of the Act and the 2<sup>nd</sup> respondent is clothed with the power to conduct the enquiry. This Court cannot exercise its extraordinary jurisdiction for granting such a relief, as passing any such order would be directly against the well decided ratio laid down on the issue.



23. For the reasons aforesaid, the impugned order passed by the 2<sup>nd</sup> respondent does not suffer the vice of any illegality, irrationality and perversity and this Court is not inclined to grant the relief sought for by the petitioners. Accordingly, this writ petition fails and the same is dismissed. Further, it is also open to the petitioners to place all the materials in his possession relating to his title and possession of the property before the 2<sup>nd</sup> respondent and the 2<sup>nd</sup> respondent shall afford opportunity of hearing to the petitioner as well as respondents 4 and 5 before passing orders on the representation filed by the 4th respondent. Liberty is also granted to the petitioners to work out their remedy in a manner known to law. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The District Collector  
Special Secretary to Government  
of Puducherry, Revenue Department  
Saram, Puducherry.
2. The Director  
Directorate of Survey & Land Records  
Saram, Puducherry.
3. The Tahsildar  
Oulgaret Taluk Office  
V.V.P. Nagar, Puducherry.

+2cc to Mr.A.Jenasenan, Advocate SR.No.14047  
+1cc to Mr.T.V.Krishnamachari, Advocate SR.No.13667  
+1cc to the Government Pleader SR.No.13728

W.P. NO. 25920 OF 2009

GJ(CO)  
GN(17/03/2022)