



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.30708 of 2019 and
W.M.P.Nos. 30787 and 30789 of 2019

1. G.Gopal

2. Saroja

3. Valliammal

...Petitioners

-vs-

1. The Ombudsman,
Tamil Nadu Local Bodies Ombudsman,
No.100, Anna Salai,
Guindy, Chennai - 32.

2. C.Velmurugan

3. The Revenue Divisional Officer,
North Chennai RDO Office - 3,
No.1, Thattankulam Road,
Madavaram, Chennai - 600 060.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for records on the file of the Ombudsman in respect of his order dated 20.06.2019 passed in complaint No.037/Ma/2019 and quash the same and consequently direct the 3rd respondent to drop the enquiry till the result of the suit in O.S.No.120 of 2015 on the file of the Sub Court, Ponneri.

For Petitioners : Mr.M.V.Vijayabaskar

For Respondents : Mr.B.Nedunchezhiyan for R1
T.Chezhiyan

Additional Government Pleader for R3



O R D E R

The prayer sought for herein is to quash the order passed by Ombudsman dated 20.06.2019 in Complaint No.037/Ma/2019 and consequently direct the 3rd respondent to drop the enquiry till the result of the suit in O.S.No.120 of 2015 on the file of the Sub Court, Ponneri.

2. The case of the petitioners is that the land in Survey Nos.107/1D1 and 109/5A1A1 measuring about 0.23 ½ cents in Kathirvedu Village, Madavaram Taluk, Tiruvallur District and other lands belonged to the father of the petitioners and they claim that it is their ancestral property. Thereafter the petitioners father died on 21.05.1991 and mother died on 25.01.2006. The 1st petitioner's sister Valliammal, aunt Saroja, her son Muthu, daughters Usha, Kamala and Radha and the 1st petitioner are living together as a Joint family. The aforesated persons executed a release deed on 21.10.2011 in favour of the 1st petitioner and the 1st petitioner's sister also executed a settlement deed in his favour on 19.10.2011. Thereafter, the document Nos.10341 and 13756 of 2011 and Patta No.3576 was issued in 1st petitioner's name and he claims that at present, he is in possession and enjoyment of the disputed property. While so, one K.V.Thiruppathiayya who is a real estate broker and an influential person, attempted to trespass into the 1st petitioner's property in S.No.107/1D1 and 109/5A1A1 and the 1st petitioner lodged a police complaint, but no action was taken. Thereafter, the first petitioner entered into a joint venture agreement with one JPRI Homes Pvt Ltd., to put up construction in the land. In the mean time, Thiruppathiayya attempted to put up a compound wall around the land belonging to the 1st petitioner. Since the concerned Police Officer failed to take action against the said Thiruppathiayya, the 1st petitioner obtained a direction from this Court in Crl.O.P.No.17219 of 2013 to take appropriate action against Thiruppathiayya.

3. Thereafter, Thiruppathiayya started creating obstruction by putting up the construction. While so, the 1st petitioner has filed a Suit in O.S.No.264 of 2013 before the District Munsif Court, Thiruvottiyur for injunction against Thiruppathiayya, in which, Thiruppathiayya has filed his written statement stating that in 1999 he met the legal heirs of Ganesa Reddiar and they divided the property orally and on 27.09.1999, a Power of Attorney was given to him and thereafter, the property was sold to various other persons. The 1st petitioner



claims that he is unaware of the oral partition, power of attorney, plotting out of land and subsequent sale to various parties but till now the property is vacant and nobody has put up any construction.

WEB COPY

4. While so, the 1st petitioner filed another Suit in O.S.No.120 of 2015 before the Sub Court, Ponneri to declare that the alleged Power of Attorney and the sale deeds are null and void as they were not executed with the knowledge of the 1st petitioner and they were false documents created by Thirupathiayya and his men. Thereafter, one C.Velmurugan i.e., the 2nd respondent herein, who is the 12th defendant in O.S.No.120 of 2015, filed a complaint before the 1st respondent Ombudsman in order to defeat the rights of the 1st petitioner, who already approached the competent Civil Court. However, without issuing any notice to the 1st petitioner, the Ombudsman passed an ex parte order on 20.06.2019 against the 1st petitioner. Challenging the same, the petitioners have filed this Writ Petition.

5. The learned counsel appearing for the petitioners submit that though the Ombudsman has no power to enquire into the matter, however in the present case the dispute between the 2nd respondent / complainant Velmurugan and one Thirupathiayya in O.S.No.264 of 2013 and O.S.No.120 of 2015 is before the competent Civil Court and the 1st petitioner is claiming title over the property. However, without issuing any notice, the 1st respondent Ombudsman has passed an ex parte order which is not sustainable in law and hence this Court may set aside the orders passed by the 1st respondent and remand the matter to the 1st respondent to pass appropriate orders. After hearing the petitioner and other persons, who are interested in the property, the 1st respondent may be directed to pass appropriate orders within a reasonable time to be fixed by this Court.

6. Mr.Nedunchezhiyan, the learned counsel for the 1st respondent submit that the order passed by the 1st respondent is only recommendatory in nature. He further submits that the 1st respondent has no serious objection in providing opportunity to the 1st petitioner and therefore, this Court may set aside the impugned order and remand the matter directing to the 1st respondent to pass appropriate orders after hearing the parties.

7. Heard the learned counsel for the petitioners and the learned counsel appearing for 1st and 3rd respondents and perused the materials placed before this Court.



8. Since no adverse order is being passed against the 2nd respondent, notice to the 2nd respondent is dispensed with. Considering the facts and circumstances of the case and the fact that the 2nd respondent made a complaint before the 1st respondent / Ombudsman against the Zonal Officer, Madhavaram and made a claim that the said land was plotted out and executed a gift deed in favour of local body, however, the 2nd respondent claims that the previous land owners Gopal, one Saroja and Valliammal executed a release deed vide document No.10341 of 2011 and registered the document vide document No.13756 of 2011 which are fake in nature created by the petitioners' and they tried to sell the property to some third parties and seeks indulgence of this Court to take appropriate action against Gopal, Saroja and Valliammal and further made a request to maintain the part of the property which was gifted. However, the 1st respondent without issuing any notice to said Gopal, Saroja and Valliammal, passed an order which is non est in law. Admittedly, Velmurugan made a complaint against Gopal, Saroja and Valliammal and without issuing any notice, 1st respondent passed the impugned order, which is liable to be set aside. Hence the matter is remanded to the 1st respondent for hearing the matter afresh and pass appropriate orders on merits and in accordance with law after affording an opportunity of hearing to the petitioner as well as the private respondents.

9. With above observation and directions this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rap/jd

To

1. The Ombudsman,
Tamil Nadu Local Bodies Ombudsman,
No.100, Anna Salai,
Guindy, Chennai - 32.



2. The Revenue Divisional Officer,
North Chennai RDO Office - 3,
No.1, Thattankulam Road,
Madavaram, Chennai - 600 060.

WEB COPY

+1 CC to Mr.B.Nedunchezhiyan, Advocate sr 8369
+1 CC to The Government Pleader sr 8325.

W.P. No.30708 of 2019

KG (CO)
SP (07/03/2022)