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W.P.No.28571 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.28571 of 2022 & WMP No.27866 of 2022

G.Gopal

... Petitioner

Vs

1. The Ombudsman,
Tamilnadu Local Bodies Ombudsman,
No.100, Anna Salai, Guindy, Chennai – 32.

2. The Zonal Officer,
Zone 3, Greater Chennai Corporation, Chennai.

3. C.Velmurugan

... Respondents

Prayer:- Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari to quash the impugned Order dated 27.09.2022 passed by the first respondent on the Complaint No.48/Ma/2022 filed by the third respondent.

For Petitioner : Mr.C.Suraj

For Respondents : Mr.B.Nedunchezian – R1



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Mrs.P.T.Ramadevi – R2

No appearance – R3

ORDER

This Writ Petition has been filed to to quash the impugned Order dated 27.09.2022 passed by the first respondent on the Complaint No.48/Ma/2022 filed by the third respondent.

2. The impugned Order has been passed on the basis of the complaint preferred by one Velmurugan alleging certain allegations against the staff of the local panchayat in not taking any steps to preserve the properties which were originally gifted to the Panchayat. On the basis of the complaint, the Ombudsman, the first respondent herein, has passed the impugned Order directing the second respondent to take action to cancel the document registered among the family members of the petitioner in respect of the land originally gifted to the Panchayat. In an earlier occasion, similar Order has been passed by the first respondent, which has been quashed by this Court in W.P.No.30708 of 2019 on the ground that no opportunity, whatsoever, is given to the Writ Petitioner. Taking note of



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the violation of principles of natural justice, that said Order came to be set aside by an Order dated 07.02.2022 with a direction to the first respondent to give proper notice to the Writ Petitioner and pass Orders. Taking note of the direction, once again similar direction has been passed by the first respondent. Challenging the same, the present Writ Petition has been filed mainly on the ground that the Ombudsman has no jurisdiction to entertain such a complaint and give a direction to take action to cancel the document and also to change the revenue records.

3. In the counter, it is stated by the first respondent that Section 12 of the Tamilnadu Local Bodies Ombudsman Act 2014 empowers the Ombudsman to dispose of the complaint forwarded for criminal offences. Accordingly, it is their contention in the counter that as the allegation is pertaining to the officials, who have not preserved the properties, the complaint has been given and the first respondent conducted enquiry and Order has been passed.

4. The learned counsel appearing for the petitioner submitted that the complainant before the Ombudsman is none other than the 12th defendant



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in the suit in O.S.No.120 of 2015 filed by the petitioner, originally pending before Sub Ordinate Judge, Ponneri and later renumbered as O.S.No.134 of 2022 before the Subordinate Judge, Tiruvottiyur and the said suit has been filed for declaration to declare that the suit property absolutely belong to the petitioner and also to cancel the alleged settlement deed said to have been executed by the Power of Attorney of the erstwhile owner. The concerned local body has also been made as the eighth defendant in the suit. Hence, the Ombudsman has no jurisdiction to entertain the complaint, besides the complaint is exfacie barred by limitation. Hence, the entire Order of the Ombudsman is without jurisdiction.

5. Whereas, the learned counsel appearing for the respondent submitted that the Tamilnadu Local Bodies Ombudsman Act 2014 empowers Ombudsman to go into the question of alleged corruption incidental thereto and proper enquiry has been conducted subsequent to the direction of this Court and Orders have been passed. Hence, the Ombudsman has got ample power to entertain the complaint.

6. I have perused entire records. As the very crux of the matter is the jurisdiction of the Ombudsman, it is relevant to extract the object of the



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the Tamilnadu Local Bodies Ombudsman Act 2014 for better appreciation of the facts, which reads as follows :

“An Act to provide for the establishment of Ombudsman for conducting enquiry on the allegations against the elected members of the local bodies and the officers and employees working under the local bodies in the State of Tamil Nadu and for matters connected therewith and incidental thereto.”

The very purpose of the Act is to conduct enquiry on the allegations against the elected members of the local bodies and officers and employees working under the local bodies and for matters connected therewith and incidental thereto.

7. Section 7 of the Tamil Nadu Local Bodies Ombudsman Act, 2014. Act deals with the functioning of the Ombudsman. The same reads as follows :

“The Ombudsman shall perform all or any of the following functions, namely:—



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(i) enquire into any written complaint from the Government or that has come to the notice of the Ombudsman in which corruption or maladministration of a public servant or a local body is alleged;

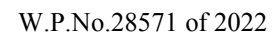
(ii) pass an order on the proved allegation in the following manner, namely:—

(a) where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate investigating agency for necessary action;

(b) where the irregularity involves loss of the fund of the local body, order recovery of such loss from those who are responsible for such irregularity;

(c) where the irregularity is due to wilful negligence or dereliction of duty of any officer or employee of the local body, recommend for departmental action by the appropriate authority under the relevant rules.”

On the basis of the written complaint from the Government or the third party with regard to the officers and elected members, Ombudsman can



8. It is also relevant to refer Section 10 of the Tamil Nadu Local Bodies Ombudsman Act, 2014 which reads as follows :

(b) any matter in respect of which an enquiry has been ordered under the Commission of Inquiries Act, 1952 or any



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matter pending before a Court;

(c) any complaint filed after the expiry of five years from the date on which the occurrence is said to have taken place.

(4) After an enquiry, if the Ombudsman is satisfied that,—

(a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there is no sufficient ground to continue proceedings; or

(c) other remedies are available to the complainant and it would be more beneficial for the complainant to avail of such remedies in view of the circumstances of the case, he/she may reject the complaint after recording his/her findings stating the reason therefor, and communicate the same to the complainant.

(5) The Ombudsman shall, subject to the provisions of this Act and the rules made thereunder, have power to regulate its procedure by fixing the time and place of sitting.

Sub Clause 2 [b] of Section 10 of Tamil Nadu Local Bodies Ombudsman Act, 2014 makes it clear that Ombudsman shall not enquire into the



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matters in respect of any matter pending before the Court or any complaint filed after the expiry of five years from the date on which the occurrence is said to have taken place.

9. It is relevant to note that the complainant before the Ombudsman is one Velmurugan, who is none other than the 12th defendant in the suit in O.S.No.120 of 2015, which has been renumbered as O.S.No.134 of 2022 and the same is pending before the Sub Court, Tiruvottiyur. When the Civil Court has already seized the matter in respect of the same issue, particularly, title over the property, in respect of which the Gift Deed has been executed and the suit is pending as on the date of the complaint, as per Section 10 [2] of the Tamil Nadu Local Bodies Ombudsman Act, 2014, Ombudsman could not have enquired such a complaint. Besides, the alleged Gift Deed is executed in the year 2013. Whereas, the complaint has been filed in the year 2019, which is also beyond the period of 5 years and the same is barred by limitation as per Section 10 [3] [c] of the Tamil Nadu Local Bodies Ombudsman Act, 2014.

10. In such view of the matter, when statute itself bars enquiry in respect of the matters which has already been seized by the Civil Court,



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giving a direction to cancel the document and effecting the revenue records, is nothing but without any jurisdiction and cannot be permitted in the eye of law.

11. Accordingly, this Writ Petition is allowed and the impugned Order passed by the first respondent dated 27.09.2022 is set aside. Consequently, connected miscellaneous petition is closed. No costs.

16.02.2023

Index:Yes/No

Neutral Citation : Yes/No

vrc

To,

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N.SATHISH KUMAR, J.

VTC

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