

(1970) 01 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 3789 of 1968

Abdul Rashid Sahib

APPELLANT

Vs

The Assistant Engineer (Highways) Kallakurichi and Another

RESPONDENT

Date of Decision : 08-01-1970

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Tamil Nadu Land Encroachment Act, 1905 — Section 6

Citation : AIR 1970 Mad 387 : (1970) ILR (Mad) 68 : (1970) 83 LW 353 :
(1970) 2 MLJ 298

Hon'ble Judges : K. Veeraswami, C.J;Gokulakrishnan, J

Bench : Division Bench

Advocate : V. Vedantachari, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. The validity of the Madras Land Encroachment Act, 1905 Is impeached In this petition, which prays for a direction forbidding the respondents,

the Assistant Engineer (Highways). Kallaburichi, and the District Revenue Officer, South Arcot District at Cuddalore, from evicting the petitioner

from a portion of his building in Kallakurichi town. The petitioner has two buildings, both abutting the Salem main road. The petitioner maintains

that the building in Survey Number 305 with the site on which it stands, has been in the occupation of his family from the time of his grandfather,

and for over 60 years, that his father made considerable Improvements to the house, and that he made it a storeyed building. In the groundfloor

there are 4 shops.

By notice dated August 22, 1968, the Assistant Engineer (Highways) purporting to act u/s 6 of the Act, called upon the petitioner to remove the

tilled top with the brick walls within a week,, on the ground that this portion was an encroachment on the highways road poromboke. The other

building which is adjacent to it is said to be a pucca storeyed building, and this too is claimed by the petitioner to be in his possession for over a

long period. By another notice, the same Assistant Engineer, about the same time, directed the petitioner to demolish that portion of the building

which he considered to be an encroachment on the road poromboke. An appeal to the District Revenue Officer, from the petitioner, having failed

in the middle of September, 1968, he was informed in the first week of October to demolish the offending portions of the building and deliver

vacant possession of the site, and that if he failed to do so, the Section Officer had orders to take possession on the 12th October.

The allegation that the petitioner and his family were in occupation of the building for the past 60 years has not been specifically denied by the

respondents. They say that the encroachments were covered by B. Memoranda and penalties sent and levied in those years, and that, therefore,

the claim of private ownership cannot be upheld. In the appeal before the District Revenue Officer, the petitioner had urged that the front of the

shop was not in any way a hindrance to the public, and that his father was in possession of this portion at least from 1915, and that in respect of

the other portion, he seems to have urged that as it was not In the road proper, and that also as it was in a low level, there was no need In any

case, for evicting him from that portion.

The District Revenue Officer, In his order dismissing the appeal, referred to the Assistant Engineer's report. He stated that both the encroachments

were in mile No. 58/8 and 58/9 on the right side of Ulundurpet-Salem Road, that this being an important busy Highway road connecting the

District Headquarters of South Arcot and Salem and other important places, the vehicular traffic was very heavy, that the first encroachment viz.,

the front portion of the shop was situate 3ust opposite to a Cinema Theatre, and so the widening of the road on that point was quite essential so

that it would be used by the pedestrians, and that the second encroachment was by way of brick walls and tiled roof over them. The Assistant

Engineer had also added that there was a proposal to widen the road.

We find that the District Revenue Officer had also inspected the two portions said

to be encroachments, and he was of opinion that the claim of private ownership could not be upheld,. He also considered that though the first encroachment was in alignment with the other buildings on either side of the shop, the widening of the road was necessary, and the encroachment should, therefore, be removed, and that as to the second encroachment, the front verandah with Mangalore tile roof, though beyond the road margin, had affected the course of drainage, and the encroachment was objectionable.

2. The petitioner's contention is twofold:--

(1) The Act is violative of Article 14 of the Constitution; and

(2) On the particular facts, summary eviction proceeding under the provisions of the Act is unjustified. The first ground is mainly rested on

Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, .

Prior to 1869, unauthorised occupation of Government land was prosecuted as an offence. But in that year, this Court held that it could not be

regarded as an offence, and that the right course for the Government in such a case was to apply to Civil Courts for eviction. The Government,

however, did not pursue this course, but instead would appear to have authorised the Collectors to impose prohibitory assessments designed to

make the encroacher quit The machinery of the Revenue Recovery Act was resorted to for enforcing collection of such penal levies. Madathapu

Ramaya v. The Secretary of State for India, ILR Mad 386 : 14 MLJ 37, ruled against the legality of this procedure on the view that the prohibitory

assessment was not an arrear of land revenue. This evidently led to the passing of the Madras Land Encroachment Act, 1905 which had the assent

of the Governor-General in June of that year.

3. The Act by its preamble stated that It was a measure for checking unauthorised occupation of lands ""which are property of Government.

Section 2 declares certain specified properties, including public roads, and streets, subject to a saving in favour of certain persons holding under

certain tenures, as the property of Government. All public roads and streets, vested in any local authority should, for the purpose of this Act, be

deemed to be the property of Government. Sections 3 to 5-B provide for levy and assessment and penalty on Government lands in unauthorised

occupation, conclusiveness of the amount assessed, and the procedure for levy of penalty.

Section 6 empowering summary eviction from unauthorised occupation reads:

(1) "Any person unauthorisedly occupying any land for which he is liable to pay assessment u/s 3 (or Section 3-A) may be summarily evicted by

the Collector (or subject to his control, by the Tahsildar or Deputy Tahsildar, or any other officer authorised by the State Government in this behalf

(hereinafter referred to as the "authorised Officer¹) and any crop or other product raised on the land shall be liable to forfeiture and any building or

other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector (or subject to

his control, the Tahsildar, or Deputy Tahsildar or authorised officer) may deem reasonable, be liable to forfeiture. Forfeitures under this Section

shall be adjudged by the Collector (or subject to his control by the Tahsildar, or Deputy Tahsildar, or authorised officer) and any property so

forfeited shall be disposed of as the Collector (or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer) may direct.

(2) An eviction under this section shall be made in the following manner, namely:

By serving a notice in the manner provided in Section 7 on the person reputed to be in occupation or his agent requiring him within such time as the

Collector (or the Tahsildar or Deputy Tahsildar or authorised officer) may deem reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer

removing any such person shall be resisted or obstructed by any person, the Collector (or the Tahsildar, or Deputy Tahsildar or authorised officer)

shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such

resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in

the office of the Collector (or any Tahsildar or Deputy Tahsildar or authorised officer) for such period not exceeding 30 days as may be necessary

to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the

Civil Jail of the District for the like period.

The proviso to Sub-sections (1) and (2) Is immaterial for the present purpose. The notice u/s 7 intended to be served in the prescribed manner on

the person reputed to be in unauthorised occupation of land being the property of Government is required to specify that property and ask for

cause why summary eviction should not be proceeded with. Assessment and penalty can be recovered as arrears of land revenue. Appeals and

Revisions are also provided for, against any order of the lower officer under the Act The provisions for stay pending disposal of appeals and

revisions, or limitation for appeal, and revision and the procedure for disposing of appeals need not detain us. Section 14 says that nothing

contained in this Act shall be held to prevent persons deeming themselves aggrieved by any proceedings thereunder, except as therein limited from

applying to civil courts for redress, provided a suit is brought within the specified time,

4. The essential steps for summary, eviction under the Act are, therefore, these:

(1) The land should be the property of Government which has a subsisting right In it;

(2) Service of notice as required by Section 7;

(3) In case of no sufficient cause shown, service of a further notice to vacate within a reasonable time; and

(4) in case of resistance, a summary Inquiry by the Collector to see if it is without any just cause. It is only where the resistance is without just

cause, the Collector has authority to issue a warrant for arrest and custody. If there is dispute as to ownership of the land, which prima facie

appears to require scrutiny, there appears to be no machinery set up by the Act which is empowered to decide the dispute. The adjudication

contemplated by Section 6(1) for forfeiture is only for any crop; or other product raised on the land, or any building erected thereon. Removal of

resistance by arrest and custody can also be resorted to under Sub-section (2) of Section 6, only if such resistance is without any just cause, and

this may be so, even where the land is admittedly Government property under encroachment, because there may be circumstances in such a case

which may warrant resistance, or obstruction.

The provisions of Section 14 which saves suits by persons aggrieved by proceedings under the Act, also point to the fact that the propriety or

validity of such proceedings is justiciable. So too open to review under Article 226 of the Constitution, is any order of the Collector u/s 6(2) as to

whether resistance or obstruction to summary eviction is, with, or without any just cause.

5. In Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, the Supreme Court was concerned with the validity of

the Punjab Public Premises and Land (Eviction and Rent Recovery) Act. The majority opinion upheld as valid the classification of persons in

occupation of Government property as a distinct class justifiably requiring a different treatment in public interest. But the majority of the learned

Judges were, however, of the view that inasmuch as Section 5 of the Act, conferred an additional remedy over and above the remedy by way of

suit, and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one

or the other and to pick and choose some of those in occupation of public properties and premises for the application of the more drastic

procedure of summary eviction under that section, it had lent itself open to the charge of discrimination, and of being violative of Article 14. Section

5 was, therefore, declared to be void Hidayatullah, J., (as he then was) and Bachawat, J., dissented from that view.

That was a case of a tenant, after the expiry of the term of the lease of admittedly Government property, over staying in possession as a tenant

holding over. The tenant by a notice was asked to show cause u/s 4 of the Act why an order of eviction from the premises be not made. The

Punjab Act by Section 3 defined unauthorised occupation so as to include the case of a lessee, who by terms of lease, had ceased to be entitled

to, but continued to occupy public premises, and by Section 4 provided for issue of notice to show cause against order of eviction, and by Section

5 the procedure for eviction.

Section 5 in effect stated that if on a consideration of the cause shown and of any evidence produced, and after giving the person affected

reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation, he may make an order of

eviction giving reasons. Section 10 confers finality to every order made by Collector, inasmuch as it cannot be called in question in any original suit

or application, or execution proceedings,

The majority view of the Supreme Court was that Section 5, providing as it did an additional remedy over and above the remedy by way of suit,

left it to the unguided discretion of the Collector to resort to one or the other, and is violative of Article 14. Though the Punjab Act is analogous to

the Madras Act to a certain extent, inasmuch as both provide for summary eviction from unauthorised occupation of Government property, we are

of the view that there is a vital difference between the two. In the Madras Act, Section 6 which provides for summary eviction is different in its

scope and effect, from Section 5 of the Punjab Act,

In the Madras Act. there is no provision like Section 5 of the Punjab Act enabling the Collector to hold an inquiry, and to find that he is satisfied

that the public premises are in unauthorised occupation, and to make an order for eviction. The powers of adjudication of the Collector u/s 6(1) of

the Madras Act are confined to forfeiture of any crop, or any building on Government premises in unauthorised occupation. If a dispute is raised

that the land does not belong to Government, or that the land is not in unauthorised occupation, we do not think that Section 6(1) enables the

Collector to decide the dispute, unlike u/s 5 of the Punjab Act.

Further, as we pointed out earlier, though the Collector has power u/s 6(2) to remove resistance or obstruction to summary eviction by arrest and

custody, he can do so only if he is satisfied that such resistance or obstruction was without any just cause. We think that the effect of this provision

is not that the Collector is invested with the power to decide finally the merits of the resistance or obstruction. His satisfaction is only in respect of

the presence or absence of any cause for it. Further, the difference between the two Acts is that by the Madras Act by Section 14 liberty is

preserved for the aggrieved person to apply to civil court for redress, while Section 10 of the Punjab Act conferred finality to every order made by

the Collector under the Act, and such an order could not be called in question in any original suit, or application, or execution proceedings.

It is not therefore, possible to say that under the Madras Act, the Collector has been given the choice without any guidance, and at his will, of the

more drastic remedy. Nor is it possible to hold that Section 6 of the Madras Act suffers from the vice which Section 5 of the Punjab Act suffered

from, as held by Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . Though the Collector under the Madras

Act may choose the remedy under its provisions viz., summary eviction, it cannot be described as drastic, because as we said, the Collector is not

vested with power to adjudicate a dispute as to the ownership of the land, and that in any case he can remove resistance or obstruction to

summary eviction only if he is satisfied that there is no just cause for it, a question which is open to review and correction in proceedings under

Article 226 of the Constitution. What is more, there is no finality attached to an order of the Collector for summary eviction, and an express

provision has been made enabling the aggrieved person to resort to the Civil Court for remedy in respect of it We, therefore, reject the attack on

the Constitutional validity of the Madras Land Encroachment Act.

6. On the other ground for the petitioner, we are inclined to think that having regard to the fact that the petitioner and his predecessors-in-title have

been in possession of the land over many years, it least from 1915 as we are told, which is not seriously denied, and that it has been built upon,

and the building has been used since construction, it cannot be said that in offering resistance to summary eviction, the petitioner does so without

just cause, for, his claim based on long possession and ownership has to be investigated in a properly instituted suit. Even in the order made by the

District Revenue Officer, there is no denial of the petitioner's claim of long occupation, during which the land was built upon. Only he would say in

his order that because the B. Memoranda were served and penalty levied on the petitioner, it followed that the ownership was with the

Government. The matter may not perhaps be so simple as that, and it is but proper and reasonable that the claim is investigated, as we said, in a

properly laid suit. We, therefore, accept the petitioner's second ground,

7. The petition is allowed, but only to this extent viz., that the respondents are forbidden from evicting the petitioner under the provisions of the

Madras Land Encroachment Act for a period of one year from to date. This limited restrictive direction is subject to the condition that the

petitioner institutes a suit within one year as aforesaid in respect of his claim. In such a suit, no limitation will be raised. No costs.