

(1999) 04 MAD CK 0165

In the Madras High Court

Case No : Writ Petition No. 5915 of 1991 and W.M.P. No. 9078 of 1991

A.N.D. Alasingarahar

APPELLANT

Vs

Collector of Dharmapuri and Another

RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Evidence Act, 1872 — Section 115

Citation : AIR 2000 Mad 71

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : R.S. Jeevarathanam, for the Appellant; R. Arul Jothi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition seeking for a writ of Mandamus to direct the respondents to forbear them from in any manner interfering into the peaceful possession and enjoyment of the residential buildings in S. No. 163/3A. A1, Denkanikotta village, Denkanikotta and to take action under the process of law.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him to file the present writ petition and requested this Court to allow the writ petition. Per contra, on behalf of the respondents a counter-affidavit has been filed rebutting all the material allegations levelled against them one after the other and ultimately requested this Court in dismiss the writ petition for want of merits.

3. Heard the arguments advanced by the learned counsel appearing for the parties. I have perused the contents of the affidavit and the counter-affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various

points raised by the learned counsel appearing for the parties during the course of their arguments.

4. In the above circumstances of the case, the only point that arises for consideration is as to whether there are any valid grounds to allow this writ petition or not.

5. The short facts of the case of the writ petitioner as seen from his affidavit are as follows : The petitioner herein is living in the present residence from the time of his forefathers, for nearly six decades, which is his ancestral property. He is the absolute owner and is in enjoyment of these houses at Denkanikottai along with the other members of his family. He has been paying house tax for the said houses and he has been using these houses only for his residential purpose. He has no other house in the said area. He states that on 7-4-1991 he noticed some markings were made in the wall of his house and he came to know that the same was done by the Highways Department for the purpose of destruction of the houses, falling within those markings on the wall belonging to him. Then the petitioner also came to know that such an action was contemplated by the 1st respondent, the Collector of Dharmapuri who ordered destruction of the houses for the purpose of broadening the road, for vehicular traffic in Denkanikottai at the instance of the second respondent. On 9th April, 1991 evening, the Panchayat workers through Thandora announcements went about this road at Denkanikottai, shouting that the houses in Denkanikottai within the markings made on them, would be destroyed, to make the road broader for flow of transport vehicles. It is his case that apart from the Thandora viz., beating of the drum, and announcing by the Panchayat workers of Denkanikotta, there has been no other communication or notice either from the panchayat or from the Collector, or from the Highways Department of the Government of Tamil Nadu to him till the filing of this writ petition. Some of the house owners situated in the above said road, met the 1st respondent, the Collector of Denkanikottai on 10-4-1991 and made a representation that there had been no official communication and on notice and that such action to destroy or demolish the houses would cause undue hardship and difficulties to the residents of this place. According to the petitioner herein there had not been any sudden sport in the vehicular traffic at Denkanikottai in the recent times, and the existing roadways is capable of taking care of the Transport Vehicles in that road. He states that there was a proposal in 1977, to broaden the road at Denkanikottai, and it was represented by the residence of that road to the then Collector of Dharmapuri, who examined the feasibility and viability of the usage of that road and withdrew the orders originally proposed. It is the grievance of the petitioner herein that a proposal which was found to be not a workable proposition is sought to be revived again, without any fresh examination of all the aspects involved, which rendered the earlier proposal unworkable and dropped for good. The residents who are put up on either side of the road, have made strong protests, and made demonstrations against such a move to demolish the houses in the area. On 18-5-1976 the petitioner herein sent a notice to then Collector raising his

objection for such a move to widen the road. The then Collector by his order dated 24-4-77 came to a conclusion that the objection of all the residents are genuine and the encroachments need not be evicted. The Collector also directed in his order that suitable bye pass roads be formed for Denkanikotta. The Collector also passed an order regularising the existing pucca building in S. No. 163/3A1A1 of Denkanikottai village. According to the petitioner herein, from then onwards, the local residents of the area have been in peaceful possession and enjoyment of their respective buildings. Some more have construed pucca buildings and others have improved their existing building by spending considerable amounts. The residents have been living uninterrupted by any authority all these years. It is stated by the petitioner herein that there had been no notice or prior intimation from the respondents at any time for demolition of houses, in that road, which was said to be done for broadening the road for vehicular traffic at Denkanikottai. It is his case that even assuming that the broadening of the road at Denkanikottai is necessary, It is but fair that an opportunity should be given to the residents, who are likely to be affected by such demolition of the houses, calling for objections and suggestions, through proper notices in a manner known to law, which was not done. Therefore according to the petitioner herein such coercive steps upon some residents of that road, is contrary to law and also opposed to the principles of natural justice. He also states that such a course is highly improper and not the course to be adopted by the authorities in power, for the purpose of broadening the road at Denkanikottai, According to the petitioner, in the absence of proper notices, calling for objections, exploring possibilities, the proposed action of the respondents is illegal, ultra vires and at any rate improper. It is his case that even assuming that he has encroached the land belonging to the state, he must be evicted under the due process of law, that the authorities cannot take the law into their own hands by following the methods unknown to law, and that no opportunity was given to him any time. No order was passed so far against him. Any attempt to disturb his possession will amount to an illegality which is unsustainable in law. The action of the respondents is also against the principle of promissory estoppel since what has been promised by the then Collector is being floated by a successor Collector thereby shattering the promises given to the residents, and such an action is wholly unbecoming of an authority whose main interest is to protect the welfare of citizen. He also states that he has no other place to reside in Denkanikotta and also no arrangement had been made, to provide alternate accommodation to the residents of that road who are likely to be affected by demolition of their houses, for broadening the road, and in the absence of the same or an agreement, the action of the 1st respondent, is high handed, illegal and ultra vires, which would tantamount to denial of opportunity to represent their grievances for redressal.

6. Challenging the impugned action of the respondents it is contended by the petitioner herein that the action of the 1st respondent to announce the demolition of the houses at the main road at Denkanikottai without proper prior

notice as per law of the land is illegal, that when there are alternative arrangements suggested by the then Collector that could be made, by laying a by pass road, the insistence of the 1st respondent to demolish the houses which are in existence from the time immemorial is bad in law, that the proposed action of the 1st respondent in reviving the proposal once considered unfit and dropped, without any valid reasons, is improper and against the principles of promissory estoppel, and that the persistence of the 1st respondent in going ahead with his proposed action to demolish the houses, in spite of protests of the residents of Denkanikottai to the authorities, without affording them a chance to make representation tantamounts to denial of opportunity and therefore ultra vires. It is also contended by the petitioner that the failure of the 1st respondent to serve the affected parties any notice or order illegal and ultra vires.

7. Per contra, it is contended by the respondents that the petitioner and his of her members have encroached nearly 52.45 sq. m. of Highways Department lands mentioned only for road purpose, that the fact encroachment falling in the Major District Road, K. M. 25/2/S.F. No. 1397 viz., Hosur Denkanikottai Road were identified and vide publicity was made to the encroachers to remove their holdings by themselves. On hearing the same all the other encroachers had removed their encroached holdings except the petitioner who has approached this Court and that the Hosur Denkanikottai road is a major district road connects two taluk headquarters. It is their case that the prevailing intensity of Traffic over the road is heavy and the encroachments along the road are of hindrance to the free flow of traffic and working space for maintenance by department and that there is no proposal to widen the road at present as mentioned by the petitioner. It is also their case that the petitioner or the other persons have no right over the Highways lands and Government cannot tolerate the hindrance made by an individual to the thousands of people and that it is not rightful for them to expect any permission to encroach the public land. According to them the present traffic is in multiples of the Traffic of a decade ago, and the hindrance to traffic created by the encroacher could not be permitted to persist. It is stated by the petitioner herein that there was no proposal to widen the road during the year 1977 as narrated by the petitioner and it would not hold good in 1991 after 14 years. It is their case that when the intensity of traffic is 10 times that of 1977, the formation of a bye-pass could not be a permit for the encroacher to occupy the Highways lands mentioned for road purposes and to give hindrance to public. It is also the case of the respondents herein that the encroacher protests to vacate the Highways lands which was legally encroached by him and no personal landed property is lost, that an encroacher is a trespasser and he has no right to obstruct the duties of the Government in maintaining the roadway for free flow of traffic in a congested town like Denkanikotta only in the interest of public. It is the categoric case of the respondents that the eviction of the encroachment is not for widening of the road, and it is only in the wake of removal of hindrance to traffic and for the working space for maintenance works. Further nobody is affected by the removal

of encroachment. Therefore, it is contended by the respondents that the natural justice could be sustained only by removal of hindrance to road traffic and not by permitting an individual to put up a part of residence in the public roadway. They also contend that the Government cannot grant house site patta to the encroacher who besides encroaching the Highways lands mentioned for road purpose giving hindrance to traffic and that therefore the action of the respondents in removing the encroachment in the public land for the free flow of traffic is genuine and not illegal, ultra vires and high handed as stated in the petition. Further it is also the case of the respondents that the encroachments area does not form the full dwelling area and only a part of the building and docs not affect the occupation and continued dwelling of the petitioner and that therefore the above writ petition has to be dismissed with costs.

8. Having seen the entire material available on record and in the above claims and counter claims made by the rival parties herein, it is very clear that the petitioner herein has encroached the Highways road land. The said aspect has not at all been disputed by the petitioner. It is also not his case that the proposed portion for destruction marked by the authorities is belonging to him by any sale deed. Whereas it is his case that even assuming that he has encroached the land belonging to the state, he must be evicted under due process of law, no opportunity was given to him at any time and no order was passed so far against him. It is also his contention that when there are alternative arrangements suggested by the then Collector could be made by laying a bye pass, the insistence of the 1st respondent to demolish the houses which are in existence is bad and also that the proposed action of the 1st respondent, in reviving the proposal once considered unfit and dropped without any valid reasons, is improper and against the principles of promissory estoppel and also that the failure of the 1st respondent to serve the affected parties any notice or order illegal and ultra vires. In the above facts and circumstances of the case, the contentions raised by the petitioner herein cannot at all be sustained. First of all, admittedly the petitioner is an encroacher of the public property since he is unable to establish that he is the owner of the land in question. Further it is the specific case of the respondents herein that the petitioner and his other members have encroached nearly 53.45 sq. mts. of Highways Department lands mentioned only for road purpose. That has not been denied by the petitioners. Further it has also been clearly mentioned by the respondents that regarding the encroachment, they were identified and wide publicity was made to the encroachers to remove their holdings by themselves. It is also significant to note that on the hearing the same all the other encroached persons had removed their encroachments except the petitioner who has come to this Court. When admittedly the property in question is encroached by the petitioner, the petitioner or the persons have no right over the Highways lands and Government cannot tolerate the hindrance made by an individual to the thousands of people. That apart it is no doubt true that the present traffic is in multiples of the traffic of a decade ago and that therefore, the hindrance to traffic created by the encroacher

could not be permitted to persist. Further it is significant to note that there was no proposal to widen the road during the year 1977 as claimed by the petitioner but at the same time, the said stand cannot hold good in 1991 after 14 years when the intensity of traffic is 10 times that the 1977. That apart when admittedly the intensity of traffic is increasing in many folds in every year, the formation of a bye-pass could not be a permit for the encroacher to occupy the Highways lands mentioned for road purposes and to give hindrance to the public. Further it is a fact that the petitioner-encroacher herein protests to vacate the Highways land which was illegally encroached by him and no personal land or property is lost. Therefore that being so it is rightly argued on behalf of the respondents that he has no right to obstruct the duties of the Government in maintaining the roadway for free flow of traffic in a congested town like Denkanikotta only in the interest of public. Another importance in this case is that the out dated story of 1976 cannot be held good after several decades in the modern traffic conditions which increased in many folds and that therefore, the petitioner cannot be allowed to encroach the present narrow road assuming that a bypass would be formed and the road side encroachments would be permitted to continue in the highways land to cause hindrance to traffic. That apart it has to be remembered that the road lands is not for building and residence and it is admitted in the petition by the petitioner himself that he has encroached the Highways road land. Therefore in this case the principles of natural justice emphasise only the removal of hindrance to road traffic and not to permit the individual to put up a part of residence in the public roadway. Further it has also to be taken into consideration herein that only a part and parcel of the encroached land has to be evicted and does not affect the entire dwelling. Therefore the action of the respondents in removing the encroachments in the public land for the free flow of traffic is genuine and the same is justified before the law and is of a natural justice rendered to the thousands of people, Therefore in such circumstance of this case, all the contentions raised by the petitioner herein fails and they are rejected.

9. Therefore, for all the above reasons and in the facts and circumstance of this case and also in view of my above discussion with regard to the various aspects of this case, I am of the clear view that the petitioner herein has not made any case in his favour and that therefore, there is no need for any interference with the impugned action of the respondent herein. Thus the writ petition fails and the same is liable to be dismissed for want of merits.

10. In the result, the writ petition is dismissed. No costs. Consequently WMP No. 9078 of 1991 is also dismissed and the order off injunction already granted therein is hereby vacated.