

(2002) 06 MAD CK 0202

In the Madras High Court

Case No : Writ Appeal No. 1162 of 2002 and W.A.M.P. No. 2168 of 2002

Bharath athna Dr.B.R. AmbedkarEducational Trust

APPELLANT

Vs

Union of India, Mass Rapid Transit System (M.R.T.S.) and
Chairman, Slum Clearance Board, Chennai

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Citation : (2002) WritLR 577

Hon'ble Judges : S. Jagadeesan, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : S. Veeraraghavan, for the Appellant; V.R. Gopalan, for respondents 1, 2 and 4, S.T.S. Moorthy, for 3rd respondent and K. Rajasekaran, for 5th respondent, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—At the request of the parties prior to the summer vacation the above Writ Appeal has been directed to be posted before the Vacation Court and the Writ Appeal has been heard on merits.

2. The Writ Appeal is directed against the orders of P.Sathasivam,J. dated 21.2.2002 in W.P.No.461 of 2002. Considering that the learned Judge has stated in detail the facts leading to the filing of the writ petition, it is not necessary to restate the pleadings. It is sufficient to mention that the appellants claiming to be representing the interest of occupants of about 122 huts at Slaterpuram eastern bank of Buckingham canal, Chennai, contend that they are enjoying the benefits of water supply, power supply, and also issued with Ration cards and entered in the Voters" list. They are objecting to the eviction proceedings which were launched against them for implementing Mass Rapid Transit System (MRTS) by the Railways and to put up a new Station in between Light House and Thirumailai. This was objected to by the appellants on the following grounds:-

(1) There was no need for a station in between the two stations.

(2) The occupants are there for several years and they have a right to remain there and they have also prescribed rights by adverse possession.

(3) No notice has been served on any of the occupants either under the Land Encroachment Act or under the Tamil Nadu Public Premises (Eviction of Unauthorised occupants) Act, 1975 and hence, violative of principles of natural justice.

(4) The occupants belong to Adi Dravida community and hence relocating them in a place away from the present occupation, and away from the city would amount to segregating them from the Society.

(5) Their occupation of the area had been ratified and recognised by various authorities and organisations and hence the authorities are estopped from seeking to dislocate them.

(6) The alternative accommodation offered at Okkiyum Thuraipakkam is far away and it will not be possible for the appellants to continue in their present employment.

3. The respondents would contend that the location of the Station as proposed was very much necessary for a purposeful implementation of MRTS and to meet the rapid development of transport, growth in population and urbanisation. The entire area belongs to Public Works Department, but encroached by the appellants unauthorisedly. They are to be rehabilitated at Okkium Thuraipakkam. Most of the occupants are willing to move over to the alternative site and had promised to vacate immediately after Pongal namely, 15.1.2002. As it is, at present they are living in an unhygienic conditions. The MRTS itself is not only in greater public interest and is also intended to cater the needs of the lower strata of the society. As regards the alternative site, it is not possible to identify any vacant area within the heart of the City. The alternative site is well provided with hygienic and basic amenities.

4. On all points, the learned single Judge found against the petitioners and dismissed the writ petition. Hence, the above writ appeal.

5. Mr.S.Veeraraghavan, learned counsel for the appellants who had argued elaborately, had reiterated the points as mentioned above, with special emphasis on the absence of show-cause notice as required either under the Land Encroachment Act or the provisions of the Public Premises (Eviction of unauthorised occupants) Act, 1975. Several judgments were cited before us in the context of show-cause notice and we are not referring to them as they are dealt with in the judgment of the single Judge under appeal, on the admitted position that announcements by public address system had been made sufficiently earlier and a Notice Board had also been put up in the area. We would deal with the submissions of learned counsel issue-wise as follows:-

ABSENCE OF SHOW-CAUSE NOTICE AND VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

6. It is true that it has been held in several judgments that before proceeding with eviction of unauthorised occupation, the statutory requirement of show-cause notice has to be complied with. The said process of compliance of principles of natural justice is not to be applied blindly or reduced to a mere fulfilment of the requirement technically on paper. What is necessary is to see whether in a given set of facts and circumstances the requirement has been substantially complied with or not and if it is shown that the aggrieved persons were put on notice of the intention to evict the encroachment and the proposed action for utilising the place for public purpose, the illegal occupants cannot have any grievance. There is no dispute over the fact that the property belongs to the Government and that all the occupants are unauthorised encroachers. Except for the claim of adverse possession, (which would be dealt with later) there is no dispute over the fact that they are encroachers. The classification of the land and the identity of the land as belonging to the Government is not in dispute. In the counter, it has been clearly stated that the occupants were duly informed through loud-speaker system. It is also admitted as seen from the typed-set of papers filed by the appellants themselves that a Notice Board was also put up by the respondents expressing their intention to evict unauthorised occupation. The need to undergo the requirement of show-cause notice must also be tested in the background of whether there is any genuine disputed claims over title or to the possession of the property, the urgency of the public purpose for which the eviction of the encroachment is sought for, the length of period of occupation by the encroachers etc., and cannot be blindly applied. The tall claim of the appellants as having been in occupation for more than 100 years has not at all been substantiated. In AHMEDABAD MUNICIPAL CORPN. v. NAWAB KHAN GULAB KHAN 1997 S.C., 152, the Supreme Court has held as follows:-

"The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachments is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principles of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the

competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principles of natural justice."

So the petitioners cannot occupy the public space by way of right as they are only encroachers. The encroachment should be removed for the benefit of the public. The petitioners cannot resist the same on the ground that notice was not given. It is well-settled that no person has a right to encroach on foot-path, pavement or public place. In view of the above, the writ petition deserves to be dismissed."

Therefore, in terms of the above judgment, even if the encroachment has been there for a long time, a reasonable notice by fixing a notice on the property by giving a time limit of two weeks or 10 days would be sufficient. The fact that such a notice was put up in the area is not only admitted, but also there is no denial of the fact that announcement was also made through public address system. Even in the grounds of appeal, these facts have not been challenged, nor the findings of the learned Judge in the said context had been questioned. Following the said judgment of the Supreme Court K.Govindarajan,J. in R.NARAYANASAMY V. COMMR., AMBATTUR MUNICIPALITY A.I.R.1998 Mad 119 has held that intimation through loud-speakers were sufficient. Therefore, the contention that the petitioners have not been put on notice cannot be sustained. Further, the facts of this case are peculiar and the above contentions should also be tested in the background of (i) for the purpose of acquisition; (2) the conditions in which the appellants are living; and (3) as to whether a scheme for alternate accommodation is provided or not. The said issues will be considered below:-

THE NECESSITY AND PURPOSE OF ACQUISITION:

7. The purpose of acquisition as stated above being undoubtedly for the larger interest of the entire society should prevail and outweigh the claims of the petitioners. It does not require citing of precedents to state the well accepted proposition of law that public interest should prevail over individual interest or of a small group and that the individual interest should give way and is sub-servient to the larger public interest. The petitioner/Trust which claims to plead for the downtrodden section of the Society should appreciate that MRTS is intended more for the benefit of the working class and community. Well-to-do citizens, who can commute the distance by four wheelers, two wheelers and hired vehicles like Taxi or Autorickshaw, have no need to travel in the electric train. MRTS is intended only to the benefit of the poor sections of the society and the need to manage the chaos and confusion in the city traffic is also emergent. Therefore, the plea that the appellants belong to downtrodden community and that they should oppose the scheme is self-contradictory and irrational.

8. The contention of the appellants that there is no need for a Station in the disputed area is also unsustainable. That is a matter for the authority to decide on an assessment of the need to locate a station for the convenience of the travelling public. The Government is not going to spend money unnecessarily without there being a need for putting up a station in that place.

CONDITIONS OF LIVING IN THE DISPUTED AREA:

9. A perusal of the photographs filed by the respondents showing the atmosphere and conditions in which the encroachers are living makes us wonder about rationale and object of the petitioner/Trust to insist that the encroachers should be allowed to remain in the same atmosphere and conditions. The fact of prevalence of encroachment of public places cannot be denied. But the atmosphere in which the encroachers in the present case are living is the worst one could ever come across. The entire area is nothing more than a gutter and drainage canal with dark, thick and blackened water stagnating around. Some of the huts are just one or two feet away from the stagnation and it is also seen that in an attempt to prevent the water from entering into the huts, the occupants have spread rubbish and sand, which will be totally insufficient and would be washed away even by light showers, not to speak of heavy rains. The entire area is a dismal breeding place for all diseases and infections and the occupants should be evicted at least on the grounds of serious health hazards even without the need for MRTS. We are really shocked that some one could insist that the people in the area for whom they are pleading should be allowed to continue to live in such inhuman and unhealthy conditions. We would like to say nothing more on the unpleasant state of affairs.

ALTERNATIVE SITE:

10. In contrast, the alternative site Okkiyum Thuraipakkam put up by the Slum Clearance Board is what one could wish for at the most, in the present circumstances. Pucca constructions have been put up with broad roads and it is sufficient to extract the following passage from the order of the learned single Judge:-

"The photographs from pages 30 to 39 of the same typed book show the newly constructed houses and other facilities at Okkiyum Thuraipakkam. The perusal of all those photographs show that there is a pucca living houses with all facilities. School and police stations are provided within the colony. Water taps are provided for water supply for every houses. There is a provision store inside the Colony. Community Centre is also provided within the Colony and Co-operative Store is also there. Large play ground is provided within the Colony. All the tenements are having separate bath-cum-toilet within their building. The houses are surrounded by avenue trees and tar roads have been provided on all round. In such a circumstance, the proposed action of the respondents cannot be construed as "inhuman act" as claimed by Mr.S.Veeraraghavan."

11. In addition to those details it is also seen that there is an avenue of trees and

Women's Co-operative Stores.

12. The criticism that it is far away from the existing place is not acceptable. Any one who is aware of the fact that there are no vacant areas over which the Government has any control in the Central areas of the City and the market price of the properties if the Government should choose to acquire private lands in central areas, would agree that it is inevitable that such facilities could be provided only by taking over lands wherever they are available as close as possible to the City. In fact even the land at Okkiyum Thuraipakkam was acquired by the Government to provide alternative sites for displaced persons. The City is expanding fastly in the said direction and area and in a few years it would become a part of the City. In a fast expanding metropolis, this is a usual feature.

13. We would only wish that the Government will properly maintain and continue to maintain the same conditions of living in the said area in future also.

THE RIGHT BY ADVERSE POSSESSION AND ESTOPPEL:

14. This claim is stated only to be rejected. When once it is admitted that the land is poromboke or public land and the occupant is only an encroacher, the first and foremost requirement to prescribe adverse title namely, the assertion of animus of exclusive title as against the true and lawful owner, is totally absent. They have themselves been frequently pleading for an alternative site from the Government. Hence, the plea of adverse possession cannot at all be entertained. As regards estoppel, no materials are placed before us to prove any promise by the competent authority of the Government to the effect that the occupants would be allowed to remain there for all times to come in future and they will not be disturbed irrespective of any public need arising in future.

SEGREGATION OF ADI DRAVIDAS:

15. The contention that relocating the appellants at Okkiyum Thuraipakkam would amount to isolating them from the main stream of the society is ill-founded. Alternative site is not established only to house the appellants alone. Various other slum dwellers of different areas and belonging to different caste, community, are also being accommodated in the alternative site. Therefore, we are unable to uphold the said contention. Further the said issue has also been considered by the learned single Judge and he has recorded a finding of fact that the occupants of Slaterpuram (appellants) are not persons belonging only to Scheduled castes, but they also belong to other communities. No materials have been placed before us to disagree with the said finding of fact.

16. In the result, we do not find any merit in any of the points raised in the above appeal and the same is dismissed. No costs. Consequently, connected W.A.M.P. is also dismissed.