

(1993) 12 MAD CK 0025

In the Madras High Court

Case No : Writ Petns. No"s. 5513, 5314 and 5659 to 5661 of 1992

B.M. Habibullah, etc. etc.

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-12-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 144
Madras Revenue Recovery Act, 1864 — Section 25
Penal Code, 1860 (IPC) — Section 183, 186, 188
Tamil Nadu Land Encroachment Act, 1905 — Section 3, 5, 6, 7, 8

Citation : AIR 1994 Mad 222 : (1994) 1 MLJ 229

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : N.S. Nandakumar, for the Appellant; A.S. Venkatachalamurthy Spl. Govt. Pleader, K. Raghunathan, D. Krishnakumar, Government Advocate, for the Respondent

Judgement

1. These five writ petitions raise common questions and hence they are taken up together and disposed of by a common order. For the sake of

convenience, I propose to refer to the facts in W.P. No. 5513 of 1992.

2. According to the petitioner in W.P. No. 5513 of 1992, he has been carrying on busines since 1970 under the name and sytle of S. A.B. Stores

in Shop No. 2, Block No. 110 in the site belonging to the Government situated near Coonoor Bus Stand falling within the municipal limits of

Coonoor Municipality. It is the case of the petitioner that he has invested considerable sums of money in the business and has also obtained licence

for running the business for the year 1992-93 and also obtained a Drug Licence under the provisions of Drug.-, and Cosmetics Act. It is stated by

the petitioner that on 11-4-1992 without any notice and justification, the 1st

respondent and an army of revenue and police officials demolished

his shop and 22 other shops by using Buldozer. It is also stated that the stock-in-trade were thrown on the streets and all the shop owners were

subjected to humiliation and ignominy. The petitioner would state that no notice was issued to him either under the Tamil Nadu Encroachment Act

or under any other law to evict them from the place occupied by them. According to the petitioners, the demolition of the shops belonging to them

is not only illegal but also high-handed.

3. On the basis of the above averments, the petitioner has sought for a writ in the nature of mandamus for the following relief:--

To forbear the respondents or any authorities claiming on their behalf from in any way interfering with the possession and enjoyment of the land of

an extent of about 160-200 Sq. Ft., in which the demolished shop No. 2 in Block No. 110, of the petitioner situated near Coonoor Bus Stand in

the strip of land adjoining the river side of the new bridge (near bus stand area), Coonoor Town, The Nilgiris District; to direct the respondents to

restore the building and structure as stood prior to 11-4-1992 of the said shop, and to direct the respondents jointly or severally to pay the

compensation of Rs. 5 lakhs for demolition and destruction of the said shop and the stock-in-trade of the business carried on by the petitioner

under the name and style of SAB Stores in the said shop, on 11-4-1992.

4. W.P. No. 5514 of 1992 is filed by one Iqbal making similar averments. According to him, he is in occupation of Shop No. 1, Block No. 110.

Similarly. W.P. No. 5659 of 1992 was filed by one 1. Venkatasubramani. He claims that his father was allotted an extent of 200 Sq. Ft. of land in

R. S. No. 2185/1 in or about 1960-61. The site plan as well as the building permit were approved in 1962 for constructing a building. Originally,

his father was carrying on Tea Stall business and after his demise, he is carrying on the said business. It is stated by him that he has been assessed

to house-tax and his application for permanent assignment was pending. He would also state that on 11-4-1992, the 1st respondent accompanied

by army of officials demolished his shop unauthorisedly and illegally.

5. W.P. No. 5660 of 1992 is filed by one K.I. Vargheese, who claims to carry on business, a General Stores and Bakery, in Revenue Survey No.

2185 for the past 1.2 years in the Coonoor Bus Stand. His grievance is the same

like that of the other petitioners.

6. W.P. No. 5661 of 1992 is filed by one P. Nanjundiah claiming to be an allottee of a site of 240 Sq. Ft. in R.S. No. 2185/1 in or about 1973.

He is carrying on a business by name Nanjundeswara Milk and Coffee Bar. His grievance is also the same like that of the other petitioners.

7. The petitioners in W.P. Nos. 5514 and 5659 to 5661 of 1992 also prayed for a writ of mandamus forbearing the respondents from in any way

interfering with their possession and enjoyment of the respective shops situate near Coonoor Bus Stand. They also prayed for restoration of the

building and structure as stood prior to 11-4-1992 of their respective shops. They further prayed for compensation in varying sum for demolition

of their shops and the stock-in-trade of the business carried on by them.

8. Respondents 1 and 3 viz., the District Collector, The Nilgiris, and the Tahsildar, Coonoor, have filed a common counter affidavit. It is stated in

the common counter that about 22 Bunk Sheds were erected unauthorisedly causing great inconvenience and marring the appearing of the tourist

spot. Such encroachments also caused obstruction for the free flow of traffic and the public at large, Therefore, according to respondents 1 and 3,

a decision was taken on the basis of G.O. Ms. No. 41, Revenue, dated 20-1-1987, to remove the encroachments so as to enable free flow of

traffic in and around Coonoor Bus Stand. It is stated that out of 22 encroachments, 12 encroachers were paying "B" Memo Fees to Revenue

Department. It is stated that notice dated 20-3-1992 u/s 6 of the Land Encroachment Act, 1905, was served by affixture on the petitioners and

the petitioners in W.P. Nos. 5659 to 5661 of 1992 refused to receive the said notice, under which 15 days time was given for removing the

objectionable encroachments. It is also the claim of the respondents that the 15 days time expired on 9-4-1992 and thereafter action was sought to

be taken on 11-4-1992, The specific case of respondents 1 and 3 is, that before the officers actually implemented the eviction, the petitioners

themselves removed their belongings including the Bunk Sheds, which are capable of being shifted, leaving the permanent structures. In other

words, the respondents would state that the petitioners voluntarily vacated the premises and removed all their belongings.

9. With reference to the petitioners in W.P. Nos. 5659 and 5661 of 1992,

respondents 1 and 3 would state that they were in occupation of Government lands after issuing due notice u/s 6 of the Land Encroachment Act. So far as the petitioners in W.P. Nos. 5513 and 5514 of 1992 are concerned, respondents 1 and 3 would state, that they are in unauthorised occupation and were not assessed to any "B" Memo Fees and they were running five shops in the locality and hence they were also removed along with the other petitioners. It is also stated by respondents 1 and 3 that excepting the petitioners, the other 17 persons who are also evicted, have not raised any objection and therefore, it is claimed that the eviction was legal.

10. The 2nd respondent, viz., the Commissioner of Coonoor Municipality, has filed a separate common counter affidavit stating that the petitioners have put up structures in the land belonging to the Government and that the land is situated on the revert mem of the River Bank and it adjoins the payment in Coonoor Bus Stand. It is his categorical case that the municipality has not issued notice for the removal of the obstruction and has not demolished any building. It is also repeated by the 2nd respondent that the petitioners voluntarily vacated and removed their belongings. According to the 2nd respondent, to his knowledge, the 1st and 3rd respondents have issued notice u/s 6 of the Land Encroachment Act.

11. Miss. Leena Nair, the Collector of Nilgiris, has filed a separate common counter affidavit dealing with the specific allegations of the petitioners. She would say that she never stayed at Coonoor (Incoshave Guest House) on the night of 10-4-1992 and that the action initiated by the 3rd respondent/ Tahsildar, Coonoor, is in accordance with law and the 3rd respondent has followed the procedure laid down by law.

12. The petitioners have filed separate reply affidavits refuting the various statements made in the counter affidavits. They also stated that no notice was issued to them under any provision of law. Further, they deny the specific allegation that they voluntarily vacated the premises and removed the articles.

13. The petitioners in W.P. Nos. 5513 and 5514 of 1992 in their reply affidavits have set out in detail the origin of the shops occupied by them, nature of investment and how the demolition took place besides denying the issue of notice under the Land Encroachment Act.

14. So far as the petitioner in W. P. No. 5659 of 1992 is concerned, he would state in his reply affidavit that he had made an assignment

application for assigning the land and the same was followed by reminder in . 1991. Pending assignment and patta, the 3rd respondent, it is

claimed, had written a letter to the 2nd respondent on 23-12-1991 seeking the latter's remarks for the grant of lease and that the 2nd respondent

had also passed a resolution for renewal of lease.

15. The petitioner in W.P. No. 5660 of 1992 would state in his reply affidavit that his building was assessed to properly tax and that he is the

absolute owner of the building. In the reply affidavit filed by the petitioner in W.P. No. 5661 of 1992, it is stated that his building was assessed to

property tax and that he is the absolute owner of the building. It is the case of at! the petitioners that they eke out their livelihood by carrying on

business in the respective shops and that they have no other source of income.

16. The 3rd respondent had filed an additional counter affidavit after perusing the reply affidavits of all the petitioners as well as the report of the

Advocate Commissioner, which I will refer to at the appropriate stage.

17. Having regard to the controversies and issues involved in the writ petitions, I felt it was necessary to appoint an Advocate Commissioner and

accordingly, I passed an order on 25-9-1992 appointing Mr. S. Mohammed Yousuff, Advocate, Madras, inter alia to peruse the official records

maintained by the 3rd respondent and submit a report after local inspection. Pursuant to my orders, the Advocate Commissioner has submitted a

detailed report together with number of annexures on 14-12-1992. Respondents 1 and 3 filed a memo of objections to the Commissioner's

report. The 2nd respondent has also filed objections to the Advocate Commissioner's report.

18. The 3rd respondent, thereafter, has filed an additional counter affidavit as well as additional objections to the Commissioner's report.

According to him, the additional counter affidavit became necessary because of the statements contained in the reply affidavit as well as in the

report of the Advocate Commissioner. In this additional counter. affidavit it is admitted that the petitioners in W.P. Nos. 5659 to 5661 of 1992

alone put up walls on three sides with zinc sheet roofs. So far as the petitioners in W.P. Nos. 5513 and 5514 of 1992 are concerned, it is stated,

that they were having only bunks owned by the 2nd respondent and they did not put up any construction. It is reiterated that all the petitioners

vacated the premises voluntarily and removed their belongings even prior to 9.00a.m., on 11-4-1992.

19. The Advocate Commissioner in his detailed report has found that all the petitioners have been in possession and enjoyment of specific sites in

Survey No. 2185/1, Coonoor Town and the sites in their occupation vary from 160 to 240 Sq. Ft. and buildings. It is also found by him that the

sites occupied by the petitioners in W.P. Nos. 5513 and 5514 of 1992 were located by the municipality during 1970 itself when the petitioners

fixed their zink sheet shops. So far as the petitioners in the other writ petitions were concerned, the buildings were constructed by them between

1961 and 1970. It is also his finding that the revenue authorities were collecting the lease amount during the subsistence of lease and thereafter they

were collecting charges under the provisions of the Tamil Nadu Land Encroachment Act from the petitioners in W.P. Nos. 5659 to 5661 of 1992.

The aforesaid petitioners were also paying the property tax in respect of the building put up by them. He has also found that the petitioners in W.P.

Nos. 5659 and 5661 of 1992 are having approved plan for the buildings. So far as the petitioners in W.P. Nos. 5513 and 5514 of 1992 are

concerned, the Advocate Commissioner has found that the shops in their occupation were allotted by the 2nd respondent. He has also found that

the 2nd respondent was collecting licence fee towards the business carried on in the respective shops.

20. According to the Advocate Commissioner, the five shops in question stood on the projected revetment mund^ation and they are not erected

on the road margin. He has also recorded a finding that the shops in question are not situated in the bus stand and they do not hinder the free flow

of traffic. On the basis of the reports and statements of the Tahsildar/3rd respondent and the Municipal Commissioner/2nd respondent, the

Advocate Commissioner has recorded the admission by the aforesaid officials that no complaint has been received from the public stating that the

shops in question pose any hindrance to the traffic or public and that two more shops are still existing even to-day.

21. In support of his findings, the Advocate Commissioner has filed copies of the "B" Memos, municipal records, revenue records, photographs

and map and sketches, police complaint, etc., besides statements given by the petitioners and some third parties. He has also filed the following

documents:--

- (i) The statements of the Tahsildar, Village Administrative Officer, Coonoor and the Zonal Deputy Tahsildar, Coonoor.
- (ii) Property tax assessment records,
- (iii) Resolutions of Coonoor Municipality.
- (iv) Statements by citizens of Coonoor.
- (v) Proceedings taken under the Land Encroachment Act records.
- (vi) Sketches and maps.
- (vii) Resolution passed by the 2nd respondent granting lease.
- (viii) Licenses.
- (ix) Records pertaining to levying of licence fees for the buildings constructed.
- (x) Proceedings of the 2nd respondent granting approval for the site for construction of a building.
- (ix) Proceedings relating to leasing of land in favour of the petitioners.
- (xii) Order of the Government granting lands belonging to Government for temporary occupation for non-agricultural purposes.
- (xiii) Proceedings relating to removal of lease.
- (xiv) Property tax receipts.
- (xv) Chitta.
- (xvi) Receipts for payment of electricity charges.
- (xvii) Receipts issued by the 2nd respondent for renewal of licences.
- (xviii) Renewal of certificate for running a catering establishment.
- (xix) Water tax receipts.

The above are the copies of the records maintained by the respondents in their respective offices.

22. Respondents 1 and 3 have filed a memo of objection to the report of the Advocate Commissioner, in which they have specifically said in

paragraph 4 that they are not disputing the period of occupation with respect to the petitioners in W.P. Nos. 5659 to 5661 of 1992. It is also

admitted by them that the petitioners in W.P. Nos. 5513 and 5514 of 1992 had

taken disputed admission said to have been made by the Tahsildar and that the applicability of Tamil Nadu Public Premises Eviction of Unauthorised Occupants Act. They have also disputed some of the findings of the Commissioner. It is significant to notice that no specific objection has been raised with regard to the public documents maintained by the respondents.

23. The 2nd respondent has also filed his objections. He has not raised any objection with regard to any documents maintained in his office, copies of which have been filed by the Advocate Commissioner.

24. Mr. A.S. Venkatachalamurthy, the learned Government Pleader has produced three files containing notices issued u/s 5 of the Land

Encroachment Act to the petitioners in W.P. Nos. 5659 to 5661 of 1992. Admittedly, no such documents are produced with regard to the other

two petitioners in W.P. Nos. 5513 and 5514 of 1992.

25. I have carefully considered the lengthy arguments of the respective counsel. I have also carefully perused the entire pleadings, documents filed

by the Advocate Commissioner and by the municipality and the other relevant papers.

26. Now, it becomes necessary for me to refer to the provisions of the Land Encroachment Act, 1905. u/s 6, any person who is in unauthorised

occupation of the land belonging to the Government, for which he is liable to pay assessment u/s 3, may he summarily evicted by the Collector.

Any building, if not removed after such written notice by the Collector, is liable to forfeiture. The procedure for eviction is laid down in sub-section

(2) of Section 6. A prior notice u/s 7 is necessary before taking action u/s 6 of the Act.

27. I have already dealt with the legal requirement of a notice under Sections 6 and 7 of the Act in my order in W.P. Nos. 9977 of 1992 and 1979

of 1993 (T.K. Rajasekaran v. The Collector of Madurai) dated 8-9-1993 wherein I have taken the following view:--

In order to appreciate the contention of the petitioners, it is necessary to understand the scope and ambit of the provisions of Sections 5 to 7 of

the Tamil Nadu Land Encroachment Act, 1905 (Act 3 of 1905). The above sections are reproduced hereunder:

(5) Liability of person unauthorisedly occupying land to penalty after notice, --

Any person in any area other than the transferred territory liable to pay assessment u/s shall also be liable at the discretion of the Collector, or subject to his control the Tahsildar or Deputy Tahsildar to pay in

addition by way of penalty--

(i) if the land be assessed land, a sum not exceeding five rupees or, when the times the assessment payable for one year u/s 3 exceeds five rupees,

a sum not exceeding ten times such assessment, provided that no penalty shall ordinarily be imposed in respect of the unauthorised occupation of

such land for any period not exceeding one year;

(ii) if the land be unassessed, a sum not exceeding ten rupees, or when twenty times the assessment payable for one year u/s 3 exceeds ten rupees,

a sum not exceeding twenty times such assessment.

Provided that where the notice under this section is caused to be served by the Revenue Inspector, he shall require the person reputed to be in

unauthorised occupation of the land to show cause against such notice to the Tahsildar or Deputy Tahsildar having jurisdiction and shall also make

a report in writing containing such particulars as may be specified in rules or orders made u/s 8 to the Tahsildar or Deputy Tahsildar having

jurisdiction.

6. Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops, etc., 1) Any person unauthorisedly occupying any

land for which he is liable to pay assessment u/s 3 or Section 3A 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 as the Authorised Officer)

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) Any 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 of 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:

Provided that no person so committed to imprisonment under this Section shall be liable to be prosecuted under Sections 183, 186, or 188 of the

Indian Penal Code in respect of the same facts.

3. Any authorised officer taking proceeding unde this section shall make a report in writing containing such particulars as may be specified in rules

or orders made u/s 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

7. Prior notice to person in occupation:--Before taking proceedings u/s 6 the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or

any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to

as the "specified officer") as the case may be, shall cause to be served on the person reputed to be in unauthorised occupation of land being the

property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be

proceeded against u/s 6.

Such notice shall be served in the manner prescribed in Section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as

the State Government by rules or orders u/s 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted

from such land u/s 6 or if he has previously vacated such land voluntarily after the receipt of a notice u/s 5B or under this section:--

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require

the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector Tahsildar, Deputy Tahsildar or

authorised person having jurisdiction, as the case may be, and shall also make a report in writing containing such particulars as may be specified in

rules or orders made u/s 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be".

The condition precedent for taking action u/s 6 is (i) issuance of a prior notice u/s 7 to the person concerned to show cause before a certain date

to be fixed (underlining is mine) why he should not be proceeded against u/s 6 of the Act; (ii) on service of such notice, if sufficient cause is not

shown serving a notice u/s 6 requiring him within such a time as the Collector may deem reasonable to vacate the land; and (iii) If such notice is not

obeyed, directing removal of the person from the land.

If 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 after such written notice, as the Collector may deem reasonable, be liable to forfeiture. Forfeiture shall be

adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct. Both the written notice and the adjudging

of forfeiture can be done by the Tahsildar or Deputy Tahsildar or other authorised officers subject to the control of the Collector.

I am not referring to the other portions of Section 6 of the Act for they are not necessary for the purpose of the present case.

The prior notice to be issued u/s 7 should specify a date before which the person in unauthorised occupation should be asked to show cause as to

why he should not be proceeded against. It is obligatory on the part of the

authority issuing notice u/s 7 to specify "a certain date". In contra distinction, Section (2) uses the expression "'Service of a notice on the person reported to be in occupation requiring him within such time'" as the Collector may deem reasonable to vacate the land. Thus, it is clear that prior notice u/s 7 should contain "a certain date" while a notice u/s 6(2) to specify such time as the Collector or his subordinate may deem reasonable. Thus, the Legislature has deliberately used two different expressions in Sections 7 and 6 of the Act. If a prior notice issued u/s 7 does not contain "a certain date", it would be in violation of the mandatory requirement of the Section.

In the light of the above legal provision, the notices u/s 7 in the present cases have to be examined. A reading of the notices issued u/s 7, as found in the files produced would clearly show that they fail to satisfy the mandatory requirement. The notices merely state that cause should be shown "within one week". This according to me, merely specify the period within which the cause should be shown to the prior notice u/s 7. Further, not even the year, month or date is mentioned in any of the notices u/s 7. They do not even say as to when the period of one week will commence.

Thus in my view, the notices issued u/s 7 of the Act are not in conformity with the mandatory requirement of Section 7. When once the prior notice u/s 7 is held to be illegal, the subsequent notices u/s 6 of the Act and the further steps taken by the Collector, Tahsildar and other officers pursuant to such notice, have to be necessarily held to be improper and illegal. On this ground alone, both the writ petitions are liable to be allowed.

However, it is also necessary for me to refer to yet another aspect in the present case. As already noticed, the authorities have made a noting in the file that not only possession was taken but also shopping complex was demolished. It has to be straightway pointed out that the act of demolition is totally without authority and in clear contravention of the provisions of Section 6(1) of the Act.

It is obligatory on the part of the Collector or his subordinates to issue a written notice to the persons in unauthorised occupation of the land to remove any building or other construction erected. If after such written notice the building or other constructions erected are not removed, the same is liable for forfeiture. Forfeiture shall be adjudged by the Collector or his

subordinates subject to his control and such forfeited property has to be disposed of as the Collector or his subordinates subject to his control may direct.

On a perusal of the files, I do not find any notice having been issued u/s 6(1) of the Act calling upon the petitioners to remove the building or other constructions. On a perusal of the file, I do not find any written notice having been issued by the Collector or his subordinates calling upon the petitioners to remove the building or other constructions. Consequently, the demolition, admittedly done by the respondent of the shopping complex is not only without jurisdiction or authority but also high-handed. Even unauthorised occupants of Government land are given certain safeguards against eviction and forfeiture of the buildings constructed on the said land under the provisions of the Tamil Nadu Land Encroachment Act. Without complying with the provisions of Sections 7 and 6 of the Act, no action could be taken either for eviction or unauthorised occupants of Government land or forfeiture of buildings constructed on such land.

28. I am told that the above view of mine in W.P. Nos. 9977 of 1992 and 1979 of 1993 has received the approval of a Division Bench consisting of the Hon"ble Chief Justice K.A. Swami and T. Somasundaram, J. in W.A. Nos. 1140 and 1141 of 1993 dated 1-11-1993.

29. On the light of the above order, we have to see whether the file produced containing the notices issued to the petitioners in W.P. Nos. 5659 to 5661 of 1992 are in accordance with the provisions of the Act. A notice u/s 5 of the Act was issued to the petitioner in W.P. No, 5659 of 1992.

It does not bear any date. In the said notice, it was mentioned that the property will be forfeited u/s 6 of the Act and petitioner was called upon to

show cause on or before 1990. There is also some over-writing. This, according to me, hardly satisfies the legal requirement of the provisions

of the Act. There cannot be ny denial of the fact that the right of hearing given to the unauthorised occupant u/s 7 of the Act is a valuable right and

a prior notice u/s 7 has to be strictly in conformity with the Act. Even the "B" Memo issued by the Tahsildar does not bear any date as to when the

Revenue Inspector or Tahsildar inspected the encroachment even though the said memo bears the month and date indicating the enjoyment of the

lands by unauthorised occupant.

30. There is another "B" Memo bearing the month of July, 1991, but without any date, signed by the Tahsildar. But, at the end of the notice (on page 2), I find the following endorsement "'Evicted land resumed to Government'" and signed by the Tahsildar on 11-4-1992. The aforesaid endorsement totally falsifies the case of the respondents in their counter that the petitioner in W.P. No. 5659 of 1992 voluntarily surrendered the lands and removed his belongings. On the contrary, it lends full support to the case of the petitioner that he was forcibly evicted by the respondents on 11-4-1992. Further, in this case, there is total non-compliance of Sections 6 and 7 of the Act. Hence, I find that the eviction of the petitioner in W.P. No. 5659 of 1992 is totally illegal and unauthorised. I also found at page 5 of the file (BMI/769/1401) that the encroachment is about 12 years.

31. So far as W.P. No. 5660 of 1992 is concerned, the procedure followed by the respondents is identical. The notice u/s 5 of the Act does not refer to any date or time within which the petitioner should show cause. It merely mentions within 15 days from the date of receipt of notice. No certain date, as stipulated u/s 7 of the Act is mentioned. Here again, the aforesaid notice does not bear any date, month or year. I find "B" Memo bearing "July" 1991. At the end of the notice at page 2 it is mentioned as follows :-- "'Evicted land resumed to Government'". I also find a notice u/s 6 of the Act issued by the 3rd respondent on 20-3-1992 calling upon the petitioner to vacate within 15 days of the receipt of the said notice. There is an endorsement saying that the encroacher was not found in the land and therefore it was served by affixture and the said endorsement is signed by the Village Administrative Officer, Coonoor, on 25-3-1992. Side by side, I find another signature in English bearing the date 19-3-1992. It passes my comprehension as to how the affixture could have been done on 19-3-1992. When the notice itself is signed by the Zonal Deputy Tahsildar on 20-3-1992. The "B" Memo signed by the Tahsildar falsifies the case of the respondents that the petitioners have voluntarily vacated the land and removed the belongings. It is also seen from page 5 of the file (BMI/853/1401) that the encroachment is about 12 years.

32. In so far as W.P. No. 5661 of 1992 is concerned, the procedure followed by the respondents is also similar. The notice u/s 5 of the Act does

not refer to any date within which the petitioner should show cause. It merely mentions "1990". No exact date as provided u/s 7 of the Act is

mentioned. Here again, the said notice does not refer or bear any date or month. Only the year "1990" is mentioned. The village Administrative

Officer, Coonoor, and the Revenue Inspector, Coonoor, have signed without any date.

33. I also find in the file a notice u/s 6 of the Act issued by the Zonal Deputy Tahsildar, Taluk Office, Coonoor, signed by him on 20-3-1992,

calling upon the petitioner to vacate within 15 days of the receipt of the said notice. There is an endorsement on the reverse of the notice that the

encroacher was not found in the land and therefore, it was served by affixture. The said endorsement is said to have been signed by the Village

Administrative Officer, Coonoor Town on 25-3-1992. I also find another signature in English dated 19-3-1992. I am unable to comprehend as to

how the signature affixed could have been done on 19-3-1992 when the notice itself was signed by the Zonal Deputy Tahsildar on 20-3-1992.

Thus, it will be clear that "B" Memo signed by the Tahsildar belies the case of the respondents that the petitioners have vacated voluntarily and

removed their belongings from the shops in question. Two signatures of witnesses are also found at the bottom of page-2 of Section 6 notice but

without any date.

34. I find from "B" Memo that the encroachment is about 11 years and above. No date is found below the signatures of the village Administrative

Officer, Coonoor, Revenue Inspector, Coonoor, and the Tahsil-dar, Coonoor. In another document "(Page-5 of the file BMI/773/1401), the

Village Administrative Officer, Coonoor and the Revenue Inspector, Coonoor, have signed without dates and the Tahsildar, Coonoor, has signed

in green ink and it bears the date as 26-9-1992, Below his signature, I found the following endorsement, signed by the Tahsildar "EVICTED

LAND RESUMED TO GOVERNMENT". Thus, it is seen, the endorsement of the Tahsildar falsifies the case of the respondents, as specifically

mentioned in the counter affidavits of all the respondents, that the petitioners have voluntarily vacated the land and removed their belongings from

the shops in question.

35. Consequently, it has to be held that the eviction of the petitioners from the

premises occupied by them is totally illegal and unauthorised. As already noticed, the specific case of the respondents that the petitioners have voluntarily vacated the premises and also removed their valuables, run counter to the documents procured by them. On the contrary, it is manifestly clear from the documents that the respondents have forcibly evicted the petitioners on 11-4-1992 in utter disregard to the provisions of the Tamil Nadu Land Encroachment Act.

36. So, far as the petitioners in W.P. Nos. 5513 and 5514 of 1992 are concerned, admittedly, the respondents have not followed any procedure prescribed in law. In this connection, I propose to refer to the voluminous public documents maintained by the 2nd respondent, and produced by the Advocate Commissioner in respect of which there is no dispute. Both the shops occupied by the petitioners were originally auctioned on 17-6-1990 and the highest bidders to whom the shops were allotted have transferred the allotment to the petitioners. In fact, the resolution of the 2nd respondent dated 30-7-1971 records delivery of possession of shop No. 2 to the petitioner in W.P. No. 5513 of 1992. On 20-3-1990, the said writ petitioner has made an application for the repair and replacement of the Tin Shed Construction and Zinc Sheet Doors by Rolling Shutters. By the proceedings of the Commissioner dated 3-4-1990, the Municipal Commissioner has granted permission for repairs and replacement.

37. Similarly, Shop No. 1 occupied by the petitioner in W.P. No. 5514 of 1992 was allotted to one Rajendran, who was the highest bidder, and later on, he transferred the same with the permission of the Municipality to the Writ Petitioner. The transfer was regularised in favour of the petitioner by the proceedings of the Commissioner of Coonoor Municipality dated 19-5-1992. It is also on record that the aforesaid petitioners have paid professional tax and the electricity service connection stands in their name.

38. So far as the petitioner in W.P. 5514 of 1992 is concerned, he has also paid the licence fee to the 2nd respondent for carrying on business in Beedi, Cigarettes, Bakeries, etc., and the same is borne out by the xerox copy of the Receipts Nos. 5924 and 5925 dated 27-2-1992. Thus, it is clear beyond doubt, that both the petitioners in W.P. Nos. 5513 and 5514 of 1992 have been carrying on business in the respective shops. I am

relying on the documents produced by the Advocate Commissioner are maintained by the respondents/public authorities in respect of which there is no dispute. As noticed by me earlier, the respondents have not followed any procedure prescribed by law before evicting the petitioners. It is not open to the respondent to evict the petitioners without following the procedures prescribed by law. Even respondents 1 and 3 in their memo of objections filed to the Advocate Commissioner's report in paragraph 10 have admitted that the petitioners in W.P. Nos. 5513 and 5514 of 1992 have taken the bunks in auction from the municipality and the petitioners in W.P. Nos. 5659 to 5661 of 1992 have erected shops on the levelled grounds.

39. In the common counter affidavit filed by the 2nd respondent there is no mention about the auction of shops or the recognition of the transfer of the shops except to say in the penultimate paragraph 12 that they never granted any lease and only given the bunk on daily rent of Rs. 12.40 and Rs. 11.50. No mention is made as to the steps taken by the 2nd respondent to evict the petitioners W.P. Nos. 5513 and 5514 of 1992 from the shops occupied by them. I am unable to accept the contention that the said petitioners have voluntarily vacated the shops on 11-4-1992. Further, the 2nd respondent has deliberately suppressed the fact that Shops Nos. 1 and 2 were auctioned in public auction and were subsequently transferred to the petitioners in W.P. Nos. 5513 and 5514 of 1992 and that they have recognised such transfer. To say the least, in the counter affidavit sworn to by Mr. M. Lakshmanan, Commissioner of Coonoor Municipality, many material particulars have been suppressed and he has filed the counter affidavit mechanically and without looking into the municipal records, copies of which were collected and produced by the Advocate Commissioner. In view of the above facts, I hold that the petitioners in W.P. Nos. 5513 and 5514 of 1992 have also been illegally and forcibly evicted without following any legal procedure. I may also mention that I have not relied on the report of the Advocate Commissioner and based my conclusions only on the municipal records collected and produced by the Advocate Commissioner along with his report. Therefore, it is unnecessary for me to refer to the memo of objections filed by the respondents to the Advocate Commissioner's report.

40. It is also my duty to mention the manner in which respondents 1 and 3 (Miss Leena Nair, Collector of the Nilgiris and Mr. V. Rarnachandran, Tahsildar of Coonoor Taluk have exercised their statutory functions entrusted to them in the matter of eviction of the petitioners. It is a matter of regret and pain that the respondents 1 and 3 appear to be oblivious of the statutory procedures to be followed before evicting unauthorised occupants under Section 6 of the Tamil Nadu Land Encroachment Act, The procedure followed by them in the present case is totally contrary to the provisions of the Act. It is the Revenue Authorities who are entrusted with the responsibility of removing unauthorised, encroachments from Government lands and before resorting to summary eviction u/s 6 of the Act, it is obligatory on the part of the respondents to follow the legal, requirements contemplated under Sections 6 and 7 of the Act. That is totally lacking in the present Case.

41. The plea of all the respondents that the petitioners have voluntarily vacated the premises on 11-4-1992 and voluntarily removed their belongings, to say the least, is totally contrary to the records and untrue as found by me earlier in paragraphs supra. The respondents viz., the District Collector, Nilgiris, The Commissioner, Coonoor Municipality and the Tahsildar, Coonoor, have not come forward candidly but instead taken a plea which is totally incorrect and against their own records. It is the duty of the 2nd respondent to produce all the records before the court. But, instead, he has kept them away from the court. But for the efforts taken by the Advocate Commissioner and the earlier orders of this court, the municipal records would not have come out at all. I am only pained to notice that the public authorities who are expected to assist the court in rendering justice should act in this fashion.

42. I also find that the respondents have demolished the shops and premises occupied by all the petitioners, which necessarily follows when once the case of the respondents that the petitioners have voluntarily vacated and removed their belongings is disbelieved and rejected. Therefore, I accepted the case of the petitioners that the respondent have forcibly evicted all the petitioners and high handedly demolished the premises. I am unable to accept the contention of the respondents that the case of the petitioners should be disbelieved because 17 other persons who were also

occupying shops have not come before court and made any grievance.

43. I may refer to the judgment of Hon"ble Mr. Justice P. S. Mishra in *Meera Nireshvvalia v. State of Tamil Nadu*, 1990 WLR 313 and the

following observation made by the learned Judge at page 321 :

A writ court's jurisdiction in these matters is mere *ex debito justitiae* than as a rule of law as courts as sentinels of the people's rights, cannot close

their eyes to matters which strictly do not fall within the realm of law, or in cases where law is thrown to winds and those who are expected to

obey, observe, and follow law, decide to violate it.....

Even without recourse to the provisions like Article 226 of the Constitution of India, Courts in India never allowed a straight case where it was

found that somebody was dispossessed of a property illegally without following the prescribed procedure of law and ordered for restoration of

possession. As to what a court of law in such a situation can do, is spelt out by a Division Bench of the Patna High Court in *Indrasan Rai Vs.*

Enayat Khan and Another, . When it was noticed that in the garb of making prohibitory orders u/s 144, Cr.P.C., a person in possession of

property was removed and another was put in possession, the court found that the law never envisaged any such power muchless any such power

in a magistrate or the police. The court examined various authorities on the subject and found observations in this regard in some of the earlier

judgments of the court including *Jai Berche v. Kedar Nath* ILR Pat 10 : AIR 1922 PC 269 Cairns, L.C. in *Rodger v. Comptoir D'Escompte De*

Paris (1871) LR 3 PC 465 and AIR 1945 18 (Privy Council) *Dependra Nath Bakwit v. State of Bihar* AIR 1962 Pat 10 , Cairns, L.C. *Rodger v.*

Comptoir D'Escompte De Paris, (1871) LR 3 PC 488, the Division Bench of the Court said.

One of the first and highest duties of all courts is to take care that the act of court does no injury to any of the suitors, and when the expression "the

act of the court's is used does not mean merely the act of the primary court, or of any intermediate court of Appeal but the act of the court as a

whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case". And thus held,

that it was a case in which the court must direct for restoration of possession. The said law had held the field uninterruptedly and it is not necessary

to multiply this principle with additional judgments. A Full Bench of the Patna High Court in Dipendra Nath Sarkar Vs. State of Bihar and Others, ,

however, examined the scope of a writ of mandamus which has since been finally determined by the authorities of the Supreme Court and quoted

with approval a passage from Farrison Extraordinary Legal Remedies, page 229, dealing with the remedy of mandamus for compelling surrender

of the properties of a Private Corporation by the incumbent officer to his successor in office. The quotation runs :

"Mandamus is generally recognised as the only speedy and adequate remedy to compelled surrender of the insignia, records funds and other

property of a private corporation by the incumbent officer who refused to deliver them to his successors in office, When it appears that he does not

hold them under any colour of right to the office. The right incidental to the right to compel surrender of the corporate office to the lawful

successor. The same principles that govern the right in the case of public officers are applicable to officers of private corporations. While

mandamus is not the proper remedy to try title of office, an incumbent holding under no colour of right cannot defeat his successor's right to

mandamus by raising the question of the validity of the latter's title and thus deprive him of the right to possession of the corporate property

belonging to the office, on the theory that mandamus is not the proper remedy to try title. As is the case of public officers, respondent, being

without any colour of right, has no title to try. A prima facie right, a right de facto, and not de jure, is all that is necessary to such cases, or all that is

involved. This court may determine without deciding actual title. Actual title is only incidentally involved, if at all. The right to possession of the

corporate property is incidental to the right to the office, not actual title, and when petitioner shows a prima facie right thereto, the court merely

rests on such prima facie title for the time being, without adjudicating the actual title, which is left to a proceeding in quo warranto. Nor is it any

defence to say that the property is not in the possession of the officer when it has been voluntarily turned over to some stranger, as it is the duty of

the officer to have it in his custody, and if not, to regain it.

In Sohanlal Vs. The Union of India (UOI), , the Supreme Court made certain observations, which, in my opinion, are relevant understanding the

scope of a writ of mandamus. In a situation like this, one Jagan Nath had been evicted from a premises in contravention of law. His eviction was, therefore, illegal. The Supreme Court found that his eviction was illegal and therefore, a writ of mandamus could issue to or an order in the nature of mandamus could be made against the Union of India to restore possession of the property to Jagan Nath from which he had been evicted. The property, however, was not in the hands of the Union of India; instead, it had passed on to a private individual. Whether a mandamus could issue in such a situation or not was the issue before the Supreme Court. The Supreme Court observed, "there is no evidence and no finding of the High Court that the appellant was in collusion with the Union of India or that he had knowledge that the eviction of Jagan Nath was illegal. Normally, a writ of mandamus does not issue or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing, specified in the order, which appertains to his office and is in the nature of a public duty (Halsbury's Law of England, Vol. II, Lord Simonds Edition p. 84). If it had been proved that the Union of India and the appellant had colluded and the transaction between them was merely colourable, entered into with a view to deprive Jagan Nath of his rights, jurisdiction to issue a writ or to make an order in the nature of mandamus against the appellant might be said to exist in a court." The observations thus make it amply clear that if the petitioner's dispossession of the house was a result of collusion of something colourable entered into with a view to deprive her of possession of the property between the respondent-officials and respondents 8 and 9, this court, therefore, shall have jurisdiction to issue writ of mandamus".

44. The above view of P. S. Mishra, J. has been followed by my learned Brother K. S. Bakthavatsalam, J., in the decision reported in T.

Rajalakshmi Vs. The Coimbatore City Municipal Corporation, . With respect, I adopt the reasonings of P. S. Mishra, J., and K. S.

Bakthavatsalam, J.

45. Accordingly, I issue a writ of mandamus directing the respondents to restore the premises occupied by the respective writ petitioners prior to

their forcible eviction on 11-4-1992, and put them in possession of their respective premises on or before 16-12-1993. As regards the claim for

compensation, all the petitioners are given liberty to approach the appropriate forum. Having regard to my findings that the respondents viz., The

District Collector, Nilgiris, the Commissioner, Coonoor Municipality and the Tahsildar, Coonoor, have exceeded their powers and have acted

arbitrarily and highhandedly and contrary to the established procedure, I feel that this is a fit case where the petitioners can be awarded costs.

Accordingly, a cost of Rs. 2,000/- is awarded to each of the petitioners, to be paid by the respondents. There will be an order accordingly in all

the writ petitions.

46. Order accordingly.