

(2010) 06 MAD CK 0188

In the Madras High Court

Case No : Writ Petition No. 19805 of 2009 and M.P. No. 1 of 2009

Dr. G. Viswanathan, Chancellor/Managing Trustee, Vellore
Institute of Technology (VIT)

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Land Encroachment Act, 1905 — Section 10, 10A, 6, 7
University Grants Commission Act, 1956 — Section 3

Citation : (2010) 06 MAD CK 0188

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Masilamani, SC for G.M. Mani Associates, for the Appellant; R. Neelakandan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The petitioner is the Managing Trustee and Chancellor of Vellore Institute of Technology (VIT). He has

come forward to challenge the notice, dated 16.09.2009 issued u/s 6 of the Tamil Nadu Land Encroachment Act, 1905 by the third respondent

Tahsildar, Katpadi Taluk. The said writ petition was admitted on 29.09.2009 and an interim stay was granted. On notice from this Court, the

second respondent District Collector, Vellore has filed a counter affidavit, dated 12.12.2009. The petitioner has filed a rejoinder, dated

20.12.2009. Original records were also produced.

2. It is the case of the petitioner that he is the Founder and Chancellor of the VIT which is deemed to be an university u/s 3 of the University

Grants Commission Act. The said institution is established by the North Arcot

Educational and Charitable Trust created in the year 1984. It is claimed that the VIT had purchased lands for running their educational institutions. The first respondent had assigned 98.80 acres of land which was purchased by them as per the price fixed by the Government vide G.O.Ms. No. 112, Revenue Department, dated 9.3.2001. By the same G.O., they were also put in possession of lands in Survey Nos. 782, 783/2, 784/1A, 784/2A, 559 of Katpadi Village and S. Nos. 20, 21, 22, 29/2, 31, 34/2, 36, 39, 446/1, 446/2, 447/1 and 447/2 in Kangayanallur Village for maintenance and the channels for enabling free flow of rain water to the lake at a distance. As per the condition imposed in the said G.O., the petitioner was maintaining the lands and also had constructed concrete revetment to the channels for free flow.

3. It was also claimed that certain portion of lands situated in between the lands assigned were subsequently sold by the Government. The petitioner also requested the Government for allotment of additional lands as the University was in need of those lands. The petitioner wrote letters to the Government and the District Collector on 20.7.2003, 11.11.2003, 2.4.2004 and 14.11.2005 for allotting or assigning or selling it on an outright basis. Those lands are lying as waste lands without use by the Government or any one. They were particular in buying the lands which are lying in between the lands alleged to have been at Katpadi village. The request by the petitioner for assigning of those lands for education purpose was pending consideration by the Government. Based on their request, the Deputy Secretary to the Government, Revenue Department by his letter dated 23.8.2008 called for various details. The petitioner university had given details of those lands and its location including survey numbers. But their request was pending consideration by the Government.

4. The District Collector issued a show cause notice, dated 21.08.2009 stating that the petitioner institute had violated the condition of assignment imposed by G.O.Ms. No. 112, dated 09.03.2001 and called upon the petitioner to give reply. The notice was not mentioned any particular provision of law. The petitioner institute sent a detailed reply on 27.08.2009. They contended that they had complied with all conditions and considerable amount was also spent in maintaining the land. Even while proceedings were pending, the third respondent activated an action in

terms of the Tamil Nadu Land Encroachment Act and issued a notice, dated 16.9.2009 to vacate the land and also to remove all constructions in

the land comprised in Survey Nos. 783/1B, 784/1A, 559, 788, 790, 556/2 at Katpadi Village and S. Nos. 31, 29/2, 34/2 and 446/2 at

Kangayanallur Village, within 15 days, failing which possession was to be taken.

5. It is claimed that the said notice was illegal. It is further claimed that the survey numbers quoted in the said notice formed part of their earlier

notice, dated 21.8.2009, for which a detailed explanation was given. Further, the notice u/s 6 of the Land Encroachment Act was given without

giving a notice Section 7 of the Act. Therefore, the notice was bad in law.

6. In response to these allegations, the second respondent in their counter affidavit, dated 12.12.2009 stated that by virtue of G.O.Ms. No. 112,

Revenue, dated 9.3.2001, the District Collector was to alienate 40.81 acres of land comprised in S. No. 564/4 etc. in Katpadi Village and 57.99

acres of land comprised in S. No. 19, etc. in Kangayanallur Village. The market value was to be paid subject to various conditions provided under

the Revenue Standing Orders. The condition imposed by the G.O., included maintenance of Odai (Stream) in S. Nos. 29/2, 31, 34/2 and 36 in

Kangayanallur village and to construct a permanent drainage system in S. Nos. 782, 783/2, 784/1A, 784/2A, 559 in Katpadi village and S. Nos.

2,19,20, 21, 22, 39, 446/1, 446/2 and 447/1 in Kangayanallur village for free and unobstructed flow of water from the path ways of mountains

(hillocks) to reach Mathalleri Eri (lake). It is further stated that the above said lands which forms odai and channels were neither alienated nor

allowed to occupy by the writ petitioner. Therefore, the statement that they were put in permissive occupation was not accepted. Instead of

constructing concrete revetment to the channels for free flow of water, the petitioner had constructed buildings, thereby obstructing free and

unimpeded flow of water to the nearby lake, besides hampering ground water recharge.

7. It was further stated that the State Government neither assigned nor sold any piece of and as contended by the petitioner. The Government is in

the process of identifying the Government lands for implementing various welfare schemes. It was also claimed that the show cause notice issued

by the District Collector on 21.8.2009 was for violating conditions stipulated in

the G.O. as well as violating the conditions imposed under the Revenue Standing Order No. 24. The petitioner had also submitted a reply on 27.8.2009 and a personal hearing was given on 23.9.2009. The hearing was adjourned twice and they were given proper opportunity. While the show cause notice issued by the second respondent was for breach of conditions of G.O. relating to the assignment, the impugned notice u/s 6 was issued by the third respondent to vacate the petitioner from the land and remove the buildings from the Government poramboke lands in various survey numbers set out in the notice. It was also claimed that in case of any violation of procedure under the Tamil Nadu Land Encroachment Act, the petitioner has a right of filing an appeal before the Revenue Divisional Officer. It was further claimed that this Court in W.P. No. 46899 of 2008 and batch of cases, dated 27.10.2009 has held that merely because issuing notice u/s 6 without notice u/s 7 is not a defect.

8. A rejoinder was filed by the petitioner and the same contentions were all over reiterated. Section 7 notice has to be issued before notice u/s 6. It was further alleged that they had not violated any terms of allotment of lands given to them.

9. Mr. G. Masilamani, learned Senior Counsel appearing for petitioner submitted that for the earlier notice of the District Collector, no final order has been passed. Notice u/s 7 if not issued, any notice u/s 6 is invalid. For this purpose, the learned Senior Counsel relied on three judgments of this Court.

a) Hamsavalli and etc. Vs. The Tahsildar, Vridhachalam, South Arcot District,

b) D. Sathish Vs. Tahsildar and others, ; and

c) V. Arunagiri and others Vs. The Divisional Engineer, National Highways, Thiruvannamalai and others, .

10. Since all the three judgments are relied on for the very same purpose, it is enough to refer to certain passages found in the judgment of

Arunagiri's case (cited supra). The following passages found in paragraph 11 and 14 may be usefully extracted below:

11. The Division Bench of this Court in Hamsavalli v. The Tahsildar, Vridhachalam AIR 1990 Mad. 350 has held that issuing of prior notice u/s 7

of the Act before taking action u/s 6 of the Act is mandatory and that non-issuing of such notice u/s 7 of the Act vitiates the eviction proceedings.

In the said judgment, reference is made to a decision of a learned single Judge of the High Court in Andhra Pradesh in *Abbaya v. State of Andhra*

Pradesh AIR 1960 A.P. 134. In the said judgment, the learned single Judge stated thus:

It is clear from the reading of Sections, 6 and 7 that the following conditions and steps of procedure have to be fulfilled and followed before a

person could be legally evicted from the occupation of Government land; (1) first the land must be shown to be Government property in which

Government have a subsisting right on the date of the proposed eviction, (2) a notice should issue u/s 7 and should be served on the person

concerned to show cause before a date to be fixed why he should not be proceeded against u/s 6 of the Act; and (3) on service of such notice and

if sufficient cause is not shown, serving a notice requiring him within such time as the Collector may deem reasonable to vacate the land; and (4) and

if such notice is not obeyed, directing removal of the person from the land; and (5) if such person in occupation resists or obstructs, a summary

enquiry by the Collector, shall be held and only after the Collector is satisfied that the resistance or obstruction is without any just cause, he could

issue a warrant for his arrest and on his appearance commit him to close custody.

Any act or attempt at summary eviction without following the procedure is totally illegal and cannot be recognised as valid. Mere service of notice

periodically u/s 7 is ineffective and does not give rise to a cause of action.

The Division Bench of this Court agreed with the statement of the learned single Judge of the Andhra Pradesh High Court extracted above, and

added that the language of Section 7 of the Act is unambiguous, when it says that before taking proceedings u/s 6 of the Act, the authority

concerned shall cause to serve on the person reputed to be in unauthorised occupation of the 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 of the Act.

The Division Bench went on to say that when a power is vested with an authority under the statute, that power must be exercised strictly in

accordance with the procedure prescribed therefor, and any departure therefrom cannot be easily tolerated. The facts in these appeals are not

disputed, inasmuch as the land on which the houses are built by the appellants

belongs to the Government; they are encroachers or unauthorised

occupants and there is nothing to show that the provisions of the Act are not attracted to the cases on hand.

14. ...It is open to the respondents, if they so desire, that the encroachments are to be removed in relation to the appellants, they can do so, but by

following the procedure as contemplated under the provisions of the Act, in particular, Sections 7 and 6 of the Act or any other law. The houses of

the appellants shall not be demolished or they shall not be evicted from the land and houses in question, without following the proper procedure as

indicated above, or without adopting any appropriate course, in accordance with law....

11. However, a learned Judge of this Court in C.N. Babu and Ors. v. The State of Tamil Nadu and Ors. in W.P. No. 46899 of 2002 and batch

of cases, dated 27.10.2009, in paragraph 8 had observed as follows:

8. The records produced by the respondents show that notices were served. Unfortunately, the notices served on the petitioners were in a printed

format, which according to the learned Special Government Pleader was used in common for the proceedings both u/s 7 and u/s 6 of the Act. In

other words, according to the respondents, an opportunity was granted to the petitioners. In such circumstances, the petitioners cannot complain of

violation of atleast the principles of natural justice, though the violation of the procedures u/s 7 of the Act, to some extent may be made out.

12. But, in the Arunagiri's case (cited supra), eviction was sought to be made without having recourse to the provisions of the Tamil Nadu Land

Encroachment Act. It was in that context, the said judgment came to be delivered. In the second case, i.e. D. Sathish's case (cited supra), though

it was contended that the format for notices under Sections 6 and 7 are same and therefore, the argument that giving notice u/s 6 can be deemed

to be as a notice u/s 7 was not accepted. In the first case (Hamsavalli's case), once again the contention was that without issuing notice u/s 7,

Section 6 notice cannot be given. But in three judgments, the contention taken by the respondents that a right of appeal is provided u/s 10 of the

same Act to an appellate authority and that a Revision u/s 10A to a revisional authority against orders of eviction passed by the original authority

was not considered. There is no quarrel over the proposition of law set out in those judgments. The petitioner, who claims to have established an university with an international standards, cannot squat over Government property under permissive occupation and when asked to return those lands, cannot resist it by filing a writ petition. There is no fundamental right to squat over such properties and they cannot be allowed to raise objections on such technical grounds.

13. It cannot be said that the petitioner was prejudiced by the non issuance of notice u/s 7. The Government Order under which the land assignment was made was issued as per the Revenue Standing Order. In that Revenue Standing Order, for violation of a condition of assignment, power is given to the Government to resume such lands. It is admitted that the petitioner themselves were put in permissive possession. With reference to violation of such conditions, it is for the respondents to decide whether any conditions were violated or not. But nevertheless the lands covered by the impugned notice were not assigned to them and they were not put in permissive occupation. On the other hand, even as per the G.O., since those lands were coming in between the assigned lands, they were asked to maintain those lands as water source so that water can be freely flow to the lake. As per the original file produced, the petitioner had put up construction even on lands which are to be maintained as "Odai and "water channels".

14. It is shocking that the petitioner are using such Government lands and had put up in Survey Number 19, a water treatment plant, a power room, a closed well, Solar power system, wind mill, sewage treatment plant, septic tank, generator room, power house, servant quarters and in Survey No. 20, a portion was converted as swimming pool, thereby violating Revenue Standing Order No. 24. Further, without approval of District Collector, fences and buildings have been put up. In the lands which are given for maintainance, they have put up EB sub station, HT Break room, entrance arch, security room, pavement road, park, cow shed, wastage room, etc. in Katpadi Village and in Kangayanallur Village, a portion of women hostel, RCC pillars, play ground and a helipad were located. Therefore, the petitioner having violated conditions of allotment cannot seek for any indulgence from this Court.

15. On the other hand, if the petitioner is aggrieved by the notice u/s 6, it is for them to appeal to an appellate authority u/s 10 or to the revisional authority u/s 10A and cannot seek relief from this Court in a writ petition under Article 226 of the Constitution of India. A person who comes to court should come with clean hands. It is not for this Court to show any indulgence when such persons had misused the permission given by the Government and have encroached a larger extent of land. If the petitioner has got assignment of land nearly to an extent of 100 acres and claims to have been running a internationally reputed university, they should have bought lands on their own and cannot squat over the Government property. The remedy under Article 226 is an equitable remedy. It is open for this Court to refuse to exercise its discretionary power in favour of such persons who have encroached larger extent of land, over which they have no ownership. Further, it is not explained as to why the petitioner has not filed any statutory appeal over the impugned order.

16. Under these circumstances, the writ petition is misconceived, devoid of merits and deserves to be dismissed. In the light of the above, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed.