
(1997) 02 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No. 12635 of 1986

Gooda Srinivasalu Naidu

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Land Encroachment Act, 1905 — Section 6, 7

Citation : (1997) 3 CTC 106

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : R.S. Jeevarathinam, for the Appellant; R. Balasubramanian, Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—This writ petition filed against the action of the second respondent namely Tahsildar, Uthukottai, Chengleput District, for initiating action u/s 6 of the Land Encroachment Act 3 of 1905 (hereinafter referred to as Act) under notice dated 18.10.1986 calling on the petitioner to surrender the land located in Survey Nos. 225 and 240/3 of an extent of 2-00 acres in Kottakuppam village, Uthukottai Taluk, Chengleput District which is said to be under the unauthorised occupation of the petitioner for which the petitioner had been assessment u/s 3 of the Act.

2. The petitioner claiming to be an agriculturist submits that he is in occupation of the said land since 1952. The land in question is situated near Kusasthalai river as river poramboke. The petitioner has developed the said land and converted the same as cultivable land. The occupation of the said land by the petitioner is neither objected to by the other local villagers nor caused any hindrance to the others in any manner. The petitioner further states that he had spent huge cost, time and energy to convert the said two acres of poramboke land into cultivable land making it suitable for raising paddy and groundnut crops periodically. Of course, the petitioner claims that even he is very regular in payment of

assessment claimed by the Revenue Authorities for the said unauthorised occupation. The petitioner also states that he has dug a well in the said land to cultivate three crops a year. In spite of all these efforts and without any default in payment of assessment, the second respondent has invoked Section 6 of the Act and issued the impugned notice dated 18.10.1986 proposing to evict the petitioner from the said land encroached by him and accordingly, the petitioner had been called to surrender the vacant possession of the land to the second respondent. Hence he has approached this Court for the issue of writ of certiorarified mandamus calling for the records relating to the said notice dated 18.10.1986 and quash the same and consequently approached for a direction to forbear the respondents from interfering with the petitioner's possession and enjoyment in respect of the said land located in S. Nos. 225 and 240/3 measuring about 2 acres in Kottakuppam village, Uthukottai Taluk, Chengleput District.

3. The respondents have filed a detailed counter-affidavit. In the counter, the respondents have stated that the impugned land is classified as river promboke and the petitioner was served with B. Memo calling on him to pay the assessment for the unauthorised occupation of the said land. Accordingly, the petitioner was paying the said assessment periodically. The respondents contend that in view of the admitted fact that the impugned land is a river poramboke and the petitioner was periodically called upon to pay the assessment for the unauthorised occupation u/s 3 of the Act, the mere fact that he was paying the said assessment charges itself, will not confer any right on the petitioner to continue possession of the land any further. Therefore, according to the respondents, the action initiated u/s 6 of the Act is within the jurisdiction of the second respondent and the same is valid as the respondents are entitled to call on the petitioner to surrender vacant possession of the impugned land to the second respondent as proposed in the impugned notice dated 18.10.1986.

4. On the basis of the above pleadings, Mr. R.S. Jeevarathanam, learned counsel appearing for the petitioner forcibly contends that the mere fact that the impugned land is a river poramboke and the petitioner was called upon to pay the assessment charges for his unauthorised occupation by way of B-memo and the petitioner is paying the assessment charges periodically to the respondents, itself would not validate the act of the second respondent for initiating proceedings under the impugned notice dated 18.10.1986 calling on the petitioner to surrender vacant possession of the land for the vital reason that the second respondents has not followed the procedure contemplated under the Act, particularly when the second respondent has failed to issue a notice u/s 7 of the Act before resorting to initiate action u/s 6 of the Act and hence, the very impugned proceedings is vitiated and is liable to be quashed.

5. Learned Additional Government Pleader, on the other hand, contends that there is no necessity to serve notice u/s 7 of the Act afresh because a notice u/s 7 was served on the petitioner during the early fasli year and the petitioner has

also been served with B-memo periodically calling upon him to pay the assessment charges demand u/s 3 of the Act.

6. Therefore, the stand taken by the respondents is very clear that there is no necessity to issue Section 7 notice before they issue the notice u/s 6 which is being impugned in the above writ petition.

7. In view of the above contentions and counter-contentions, it is just and necessary to refer Section 7 of the Act which runs as follows:

"Section 7: Prior notice to person in occupation:- Before taking proceedings under (Section 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 unauthorizedly 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 5-B 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 unauthorized 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)".

8. A plain reading of Section 7 makes it clear that there is a condition precedent that a person sought to be evicted u/s 6 of the Act, should be served with notice u/s 7 of the Act before the authorities propose to initiate action u/s 6 of the Act. What is required as contemplated u/s 7 is "a prior notice to the person in occupation." The word "a prior notice" mentioned in the marginal Note to Section 7 is explained in the operative portion of the Section itself as "before taking proceedings u/s 6, the Collector..... shall cause to be served on the person reputed to be in unauthorised occupation of land.....calling on him to show cause before a certain date why he should not be proceeded against u/s 6."

9. It is well settled law that when a power is vested with an authority under the

statute, that power must be exercised strictly in accordance with the procedure prescribed. Therefore, any departure therefrom cannot be easily tolerated. In the instant case, the very statute prescribes the manner in which power should be exercised by the authorities and there is no provision in the statute to dispense with such a procedure at all. The statutory prescriptions must have their due significance by observance and they cannot be allowed to be breached and amelioration therefore cannot be thought about by saying that the persons affected could participate in the enquiry. Merely because such notices u/s 7 of the Act had been periodically served on the petitioner on the earlier occasion itself does not give a cause of action for the present impugned eviction proceedings dated 18.10.1986 of the second respondent.

10. It is needless to mention that time and again there are judicial pronouncements of this Court as well as other High Courts on the point that unambiguous language of the statute contemplating certain statutory requirements prescribed in the statute itself cannot be reduced to an empty formality. Of course, a decision of the Division Bench of this Court reported in Hamsavalli and etc. Vs. The Tahsildar, Vridhachalam, South Arcot District, and other decision of this Court namely reported in P. Rameswamy v. The Assistant Engineer, Highways and Rural Works Department, Nagapattinum 1977(I) M.L.J. 162 : AIR 1978 NOC 223 and a decision reported in Abbayya v. State of Andhra Pradesh AIR 1960 A.P. 135, are to the same effect that summary eviction proceedings proposed u/s 6 is held to be invalid for non-issue of a prior notice contemplated u/s 7 of the Act.

11. For the above reasons, the writ petition is allowed. No Costs. However, I make it clear that this shall not debar the respondents from initiating proceedings strictly in accordance with the provisions of the Act if so required and equally it is open to the petitioner to counteract the same as per the rights and stand available to him in law.