

(1986) 01 MAD CK 0051
In the Madras High Court

Govindarajulu and Others

APPELLANT

Vs

Assistant Divisional Engineer, H. and R.W. Vridhachalam

RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Citation : (1987) 100 LW 618 : (1987) 2 MLJ 243

Hon'ble Judges : Sathiadev, J

Bench : Division Bench

Judgement

Sathiadev, J.—Petitioner in W.P. No. 5373 of 1981 claims to be the owner of premises No. 41, South Fort Street, Vridhachalam and that is worth Rs. 1.50 Lakhs. He claims as follows : On 2.6.1981, he received an order of eviction purporting to be one under Rule 5 of the Rules framed under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1960; calling upon him to remove the property within seven days from the date of the service of the notice, as possession has been already taken in pursuance of the eviction proceedings taken u/s 3(1) of the Act; fixing 6.6.1981 as the date of enquiry for verifying whether the occupation of the public premises is unauthorised occupation, and that the competent authority will hold an enquiry at Highways Compound, Vridhachalam, and that all those who are interested are to attend the said enquiry. Particulars in the notice were partially filled up. Before this notice, no communication of any kind was ever served upon him. Similar notices were also served on several other persons. Petitioner and others met the respondent on 6.6.1981, who stated that a decision had been already taken to remove forcibly the alleged encroachments by invoking the provisions of the Act. When they wanted to file their replies in writing, he said that no useful purpose would be served by filing any reply, as it is evident from Form B notice issued along with Form A notice, stating that the alleged encroachments would be removed, if necessary, by force. As he observed that, to avoid embarrassment, petitioner should vacate and deliver possession; and having no other alternative remedy, the writ petition had to be filed to quash the illegal action taken by the respondent.

2. Similar averments were made by other petitioners, who were also placed in the same predicament as that of this petitioner.

3. Mr. N. Ganapathy, learned Counsel for some of the petitioners, submits that,

(1) Respondent was totally ignorant that in the year in which he issued the impugned notices, T.N. Act 27 of 1960 had been already repealed as early as 1976.

(2) He had no authority to issue notice in Forms A and B at the same time and in a wrong sequence.

(3) In spite of these illegalities, in the enquiry fixed for 6.6.1981, he was not receptive to reasonable pleas put forth by petitioner and was bent upon forcibly destroying the valuable buildings of petitioners, and that he was abusing the quasi-judicial power conferred upon him.

4. Though notices of all these writ petitions have been served on the respondent as early as July, 1981 no counter-affidavit is filed even in a single writ petition in spite of 4 1/2 years. During the past two weeks, in several old writ petitions, similar situation of non-filing of counter-affidavit is noticed.

5. Learned Government-Advocate claims that the instructions received by him are to the effect that prior to the impugned notice, proceedings have been taken under the Act to determine as to which portion of the property of the Government had been unauthorisedly occupied, and that petitioners had ample opportunity, and only thereafter the impugned notices; have been sent. Not a single piece of record in support of this claim is placed before Court.

6. Respondent claims to be a competent authority constituted under T.N. Act 27 of 1960. Under the Act, by a notification, a Gazetted Officer of the Government is named as competent authority u/s 2(b) and thereby he is conferred with quasi-judicial power to be exercised in removing unauthorised occupation. Respondent (Thiru V.L. Koteeswaran) was totally unaware that the said Act had been repealed in 1976 and replaced by T.N. Act I of 1976. After five long years, he continues to be under the impression that he is still conferred with power under the repealed enactment. This is not an instance where, in one portion of a communication, by oversight or error, a wrong provision of law had been mentioned though the authority had the necessary power under a relevant section. In the two communications which he had sent, in more than one place, he had invoked powers under different provisions of the repealed enactment for removing the superstructures belonging to the petitioners. He had avoided precision and had not equipped himself about; the powers he was possessed of. This sort of callous manner in exercising his; powers coupled with highhandedness, which had been pleaded by the petitioners, has to be put down firmly not only by Courts but also by the Government, solely in public interest. To hear the plea being put forth that even though a Gazetted Officer conferred with quasi-judicial power may be ignorant of the relevant provisions of an enactment or

about its existence or not, and negligently issues notices with wrong provisions of law invoked by him; the recipients of such notices, who are members of the general public, should read into these notices, the relevant and correct powers conferred upon him and defend themselves accordingly, is totally unacceptable to this Court. This only shows that the decision rendered in *The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal*, and in *Hukumchand Mills Ltd. Vs. The State of Madhya Bharat and Another*, , is being more abused than what was intended therein in a particular situation. It has almost become an order of the day, in any and every matter, wherein wrong provisions of law are invoked in notices and orders are passed without referring to relevant provisions, to rely upon the said decision of the Supreme Court and try to get over patent and negligent acts committed by quasi-judicial authorities. Decisions are rendered to make authorities to function lawfully and not for enabling them to function negligently and ignorant of their powers, and yet to emerge out of proceedings as if no mistake had been committed. Hence, the manner of issue of notices in these cases shows that, the concerned authority had not cared to equip himself of the quasi-judicial powers which he could exercise.

7. Nothing precluded him from, contacting the Law Officer of the area and equip himself as to what sort of power he could exercise to interfere with the rights of citizens. He must have realised his responsibility, when he was intending to destroy the buildings belonging to several of these petitioners. He was interfering with the rights of citizens in owning their properties, which are very valuable. To remove such properties it would take several years in a Civil Court, whereas he would be achieving it in no time. When such drastic action was being taken, he had not taken the elementary care to find out the relevant provisions, under which he was exercising powers. This being apparent on the face of the two notices placed before the Court, there is no scope for holding that only wrong provisions of law had been quoted and that the notices were in order.

8. It is not properly explained as to how he could issue both Form A and B notices on the same day. He had put Form B notices ahead of Form A notice, in the same sheet of paper. In Form A notice, he had not even mentioned the relevant survey number or even the name of the village. He states that he will hold an enquiry on 6.6.1981 to verify whether the occupation of the public; premises is an unauthorised occupation or not. Whereas in the Form B notice it is claimed that possession of the premises had been taken by the Government in pursuance of eviction proceedings taken u/s 3(1) thereafter. Form B under Rule 6 can be issued only after Form A under Rule 3(b) and not later nor together. This sort of rolling up together both the notices is totally opposed to the provisions of the enactment which he had relied upon or the one which was in force in the year in which the impugned notices were issued. Assuming that he was one, who was well conversant with the provisions of both the enactments, and he was exercising power under T.N. Act I of 1976, even then it is apparent that he had committed illegalities in issuing these two notices together. Demolition and removal of property of a citizen in this country, in negation of established law,

cannot be looked upon lightly; and by the Government not taking follow up actions when such high handed actions are pointed out, it leads to more petitions being filed in Courts, and in turn the public being faced by such illegal actions repeated with immunity. Hence, even if for any reason it is to be held that all the errors found in the notices should not be noticed, and a presumption should be drawn that respondent had functioned only under T.N. Act I of 1976; even then, by issuing both the notices on the same day, he had committed an inexcusable illegality.

9. No records having been produced about what earlier actions were taken preceding the impugned notices, the claim put forth by learned Government-Advocate that the impugned notices were only consequential ones, and in order, cannot be accepted. If so, there would have been no necessity to issue the notice in Form A proposing to hold an enquiry u/s 3(1) of the Act as late as 30.5.1981.

10. Mr. Ganapathy, learned Counsel refers to the decision in Brinda Muthuswami Vs. The Tamil Nadu Small Industries Development Corporation Ltd. and Others, , where in a Division Bench of this Court had pointed out that it is only subsequent to the order of eviction and taking possession u/s 5(2) of the Act, the disposal of the property left on public premises by unauthorised occupants, could be done. Proceeding it, several statutory procedural requirements have to be adhered to, and they are all incorporated in Sections 4 and 5 of the Act. This was construed as conferring substantial rights on occupants of properties covered by the Act, and it will have to be complied with before an order of eviction is passed. Even though such safeguards have been conferred under the Act, respondent had, as pointed out above, taken high-handed actions which are patently illegal.

11. One other unfortunate feature in this batch of cases is that, on affidavits and petitions served upon respondent as early July, 1981, and on reading them, respondent and his superior officers would have realised about what had occasioned, and how far the action taken was indefensible but yet nothing was done towards them as indicated below. The intention in taking action was to widen a State Highway, which is of public importance. Any delay in execution of such beneficial schemes affects public interest considerably like several accidents occurring because of narrowness or improper alignment; delay in transit of vehicle with people or goods, etc etc. Instead of allowing 5 1/2 years to pass by in this manner, the concerned authorities could have taken a decision to inform the Court that they would withdraw the notices as issued and proceed strictly in accordance with law, in which event, by now, by following the proper procedure, the intended purpose could have been achieved.

12. Thousands of writ petitions are filed every year. This sort of situation developing is not unknown to Government since independence. By timely withdrawal of many impugned orders, it would not only reduce litigations to a large extent but bring about many advantages. Expense on litigations is soaring high and it is a drain on public revenues. The thinking that each and every petition should be contested, is not at all in the interests of public. Not less than

10,000 Writ Petitions are filed every year and all of them are opposed, as if not a single erroneous order had been passed, or action taken. To reduce number of writ petitions; to reduce litigation expenses; to prevent delay in implementing of schemes; to carry out orders passed expeditiously; to be effective and to infuse efficiency in administration etc., it is not difficult for the Government to evolve a slightly different methodology, when "rule nisi" are served upon it. On receipt of petition and affidavit, an in-depth study could be made on points taken therein, and on realising of what had occasioned, to immediately report to the Court and seek for withdrawal of the impugned proceedings, so that further action could be taken in accordance with the provisions of the Act. Every matter could go through a Screening or Advisory Body of two experienced administrators whose valuable opinion could then be implemented resulting in withdrawal of assailed orders within two months of institution of writ petitions, wherever they find that citizens' pleas are correct. In many cases, non-issue of statutory notice and failure to serve orders are pleaded. Another invariable plea is failure to adhere to principles of natural justice. Quite often they occur, not because of ulterior motives of concerned authorities. Once pointed out by an affected citizen; the authority realises what had actually happened but is not enabled to admit it, but has to deny all the averments and wait for a decision from Court. This is a known laborious, expensive and time consuming process. On advice or opinion of an Advisory body, the concerned officer could take permission of Court and rescind the impugned order, and then without any loss of time restart the proceedings and thereby accomplish the desired results for public good. What should happen at appropriate time fails to occur, and for procedural errors committed contrary or opposed to statutory mandates, many beneficial schemes get delayed. Unless some such rational procedure is followed by State, the woes of citizens having constitutional rights cannot be quenched at the earliest. In turn, intended public good gets inordinately delayed.

13. Hence, taking note of the manner in which action had been taken, cost is awarded in all these petitions. Hence, all these writ petition are allowed with costs. Counsel fee Rs. 500 in each writ petition.