

(1990) 04 MAD CK 0027

In the Madras High Court

Case No : W.As. No's. 319, 446 and 447 of 1990

Hamsavalli and etc.

APPELLANT

Vs

The Tahsildar, Vridhachalam, South Arcot District

RESPONDENT

Date of Decision : 24-04-1990

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 26

Penal Code, 1860 (IPC) — Section 183, 186, 188

Tamil Nadu Land Encroachment Act, 1905 — Section 3, 5, 6, 7, 8

Citation : AIR 1990 Mad 350

Hon'ble Judges : Swamidurai, J; Nainar Sundaram, J

Bench : Division Bench

Advocate : R.S. Venkatachari, for the Appellant; K. Ravi Raja Pandian, Addl. Govt. Pleader, for the Respondent

Judgement

Nainar Sundaram, J.—These three writ appeals can be disposed of by a common judgment and they do arise out of a common order in

three different writ petitions. The appellants herein were the petitioners in the three writ petitions. The appellants challenged the notice given to them

under S. 6 of the Tamil Nadu Land Encroachment Act, 1905, hereinafter referred to as the Act for their eviction from the lands occupied by

them. The main contention put forth by the appellants was that they had not been served with a prior notice as laid down by S. 7 of the Act, and

this vitiates the entire proceedings. The learned single Judge who dealt with the writ petitions, ordered notice of action, and on service of such

notice of motion, the learned Government Advocate representing the respondent stated that notices were issued under S. 7 of the Act to the

appellants. The learned single Judge perused the records produced before him by the learned Government Advocate representing the respondent

and found that the statements, which formed part of the records only showed that notice under S. 5 of the Act alone had come to be issued. Yet

the learned single Judge opined that whether notices under S. 7 of the Act have been issued or not, an enquiry before taking proceedings under

S.6 of the Act would serve the cause of the appellants and directed such an enquiry, permitting the petitioners to participate in that enquiry and

thereafter the respondent was directed to pass the appropriate orders. The learned single Judge gave further direction that till orders are passed by

the respondent, no proceedings shall be taken by him to disturb the possession of the appellants. The writ petitions were allowed in the above

terms. These writ appeals, as already stated, are directed against the common order of the learned single Judge.

2. Mr. R. S. Venkatachari, learned counsel for the appellants, would submit that the learned single Judge directing an enquiry would not be of any

solace at all to the appellants, and when the statutory prescriptions contemplate the issuance of a prior notice under S. 7 of the Act, that cannot be

skipped over and short-circuited, and when that lacuna has been found, the learned single Judge ought to have quashed the impugned notice under

S. 6 of the Act. On an assessment of the provisions of the Act, we are obliged to countenance the grievance of the learned counsel for the

appellants. Nor the purpose of assessing the position, we feel obliged to refer to the relevant provisions of the Act. Section 5 of the Act spends

about liability of person unauthorisedly occupying land to penalty after notice, and its language runs as follows:--

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 under S. 3 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 amending five rupees or, when ten times the assessment payable for one year under 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 under S. 3 exceeds ten rupees, a sum not exceeding twenty times such assessment.

Section 6 is elaborate when it speaks about liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops etc., and

there is a need to extract the said provision as follows :--

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 3-A 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. Forfeiture 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) An eviction under this section shall be made in the following manner namely :-- By serving a notice in the manner provided in S. 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 or imprisoned under this section shall be liable to be prosecuted under S. 183, 186 or 188 of the Indian

Penal Code in respect of the same facts.

(3) Any authorised officer taking proceedings under 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.

Then comes S. 7 and it contemplates prior notice to person in occupation before taking proceedings under S. 6 of the Act. The body of S. 7 reads

as follows :--

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

proceeded against under S.6.

Such notice shall be served in the manner prescribed in S. 26 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the

State Government by rules or orders under 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 voluntarily after the receipt of a notice under S. 5-B or under this section; provided further that where the notice under this section

is caused to be served by way 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 under S. 8 to the Collector,

Tahsildar or authorised person having jurisdiction, as the case may be.

As to how these provisions, and in particular Ss. 6 and 7 of the Act, have got to be worked out has been the subject matter of review by a learned

single Judge of the High Court of Andhra Pradesh in Ravipudi Abbayya Vs. State of Andhra Pradesh and Others, , and the learned single Judge

summed up the position in the following terms: (at p. 140)

It is clear from the reading of Ss. 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 under 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 under 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 under S. 7 is ineffective and does not give rise to a cause of action.

We are in agreement with the above summing up since it succinctly brings out the procedure that has got to be adopted as per Ss. 6 and 7 of the

Act. The language of S. 7 of the Act is unambiguous when it says that before taking proceedings under S.6, the Authority concerned shall cause to

serve 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 under S. 6 and Section 7 also contemplates as to

how such notice shall be served. It is not possible to belittle the requirements of this provision and reduce them to an empty formality. 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. In *P. Ramaswamy v. the Assistant Engineer, Highways and Rural Works Department, Nagapatinam*, (1977) I MLJ 162 : AIR 1978 NOC 223 Ramanujam J., was obliged to frown upon the initiation of notice for summary eviction under S.6 of the Act when there have been no notice under S. 7 of the Act served on the party. This being the implications, which are imperative, of the provisions of the Act, we are obliged to countenance the grievance put forth on behalf of the appellants through their learned counsel Mr. B. S. Venkatachal. We are not able to appreciate and fall in line with the view of the learned single Judge that whether notices under S. 7 of the Act had been issued or not, if enquiry is held that would serve the cause of the appellants. As we stated above, 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, which must ensue. Under these circumstances, we are obliged to interfere in writ appeal, and accordingly these writ appeals are allowed; the common order of the learned single Judge in W.P. Nos. 14713, 14629 and 15121 of 1980 is set aside and these writ petitions will stand allowed as prayed for. No costs. We make it clear that our allowing the writ petitions shall not debar the respondent from initiating proceedings strictly in accordance with the provisions of the Act, if there is warrant for it and it is open to the appellants to counteract the same as per their rights and stand available to them in law.

3. Appeals allowed.