

(1999) 10 MAD CK 0074

In the Madras High Court

Case No : W.P.Nos. 10895 and 14554 of 1999

K. Kathalingam

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

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

Citation : (1999) 3 CTC 636 : (2000) 1 MLJ 247

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. N.C. Ramesh, for the Appellant; Mr. G. Sankaran, Government Advocate, for the Respondent

Judgement

1. The petitioner claims that his father purchased the lands bearing Survey No. 409/1 and 409/2 in Thuvrankurichi village, Pattukottai Taluk, Thanjavur District. During his life time, in the year 1993 on the basis of oral partition, the petitioner was allotted the said lands. According to him, from 1993, he has been paying the kist and enjoying the said properties. Since the respondents 2 to 4 have decided to treat these lands as if they belong to the Government, and were taking steps to take possession of the lands by force, the petitioner filed a suit in O.S.No. 41 of 1999 before the Sub-Court, Pattukottai in March 1999. Though the petitioner filed an application in I.A. No. 104 of 1999 seeking for an order of injunction restraining the respondents therein from interfering with his peaceful possession. Notice was ordered and the said petition is pending consideration by the Civil Court. Thereafter, according to the petitioner, on 16.6.1999, the 4th respondent along with the Village Administrative Officer, the Revenue Inspector and also with the police came to the said lands and tried to evict the petitioner by using bull dozers. uK petitioner and other owners prevented them and so a complaint was lodged against them. On that basis that petitioner has filed the writ petition in W.P.No. 10895 of 1999 to issue a writ of mandamus, for bearing the respondents tram evicting the petitioner from the said lands without following due process of law.

2. This Court ordered notice of motion. Pending that writ petition, the respondents claim that they have taken possession of the same. So, the petitioner has filed the writ petition in W.P.No. 14554 of 1999, seeking to issue a writ of mandamus, directing the respondents to re-deliver possession of the said lands.

3. The learned counsel appearing for the petitioner has submitted that the petitioner has purchased the said lands in 1986, and even before that the vendors had been in possession of the said lands for a long number of years. The petitioner claims that he has been in possession and enjoyment of the same at least from 1986 thereby claiming that he is in possession of the said lands, and so he cannot be evicted high-handedly, without following the procedure in accordance with law. According to the petitioner, he is in possession of the said lands. But, in any event if this court come to the conclusion that possession of the said lands have been taken as stated by the respondents, order has to be passed for re-delivery of possession.

4. The learned Government Advocate, on the basis of the file, and on instruction has submitted that the authorities have issued "B" memo, and only after taking proceedings under the Land Encroachment Act, possession has been taken, and so the petitioner's case cannot be accepted. According to him, "B" memo was issued in 1998. Notice u/s 5 of the Land Encroachment Act was issued on 20.11.1998. Notice u/s 7 of the Act, dated 1,12.1998 was served by affixture on 1.12.1998. Since there was no objection Section 6 proceedings were issued on 20.5.1999 and affixed on 25.9.1999, as the petitioner refused to receive the same. It is not in dispute that the petitioner is in possession of the said lands. It is also not in dispute that the petitioner filed a suit in O.S.No. 35 of 1999 on the file of Sub-Court, Pattukottai seeking declaration that the petitioner is the owner of the said lands and he is entitled to be in possession and for consequential injunction. In the injunction petition filed by the petitioner, in view of the statement made in the counter affidavit, no order was passed. It is also not in dispute that the respondents tried to evict the petitioner. According to the petitioner, the said action of the respondents is without following the procedure, and not in accordance with law. According to the respondents, only after issuing proper notices under the Land Encroachment Act, they have taken steps to evict the petitioner, and in fact the petitioner has been evicted.

5. From the file, I am able to see that in October 1998 the authorities have decided to evict the petitioner and steps with respect to the lands bearing Survey Nos. 421/1, 421/2, 421/3, 421/5, 413, 409/1, 409/2, 409/3 and 409/5 have been taken to evict them for the purpose of utilising the same for establishing "Samathuvapuram". Thereafter an inspection seems to have been made on 18.12.1998. and "B" memo was issued to the petitioner. But the said memo was not served on the petitioner, but it was affixed. The reason for affixture is not stated in the "B" memo. From the endorsement made in the said copy of the "B" memo. I am not able to see that the petitioner refused to receive the same. Even

according to the authorities the proceedings u/s 6 were served by affixture on the ground that the encroacher refused to receive the same. This endorsement has been made by the Village Administrative Officer. Except this endorsement there is no other document available to support the plea that the petitioner has refused to receive the said document. I do not find any copy of the notice issued u/s 7 of the Act, though it is stated by the learned Government Advocate that it was affixed on 1.12.1998. From the abovesaid facts, it is very clear that no proceedings were served on the petitioner, and from the documents, I am not able to see any acceptable evidence to show that the petitioner refused to receive the same, The learned counsel appearing for the petitioner has submitted that even assuming that the authorities have taken proceedings under the Land Encroachment Act, it has to be decided whether such summary proceedings can be taken with respect to the petitioner's case. The learned counsel has further submitted that when the dispute regarding possession itself is pending before the civil court, the respondents are not correct in invoking summary proceedings. According to him, the possession cannot be taken on the basis that notices have been issued, without making any enquiry by the Collector, especially when the petitioner has raised objection that he should not be evicted from the said lands. I find some force in the said argument. The learned Judge of Andhra Pradesh High Court in the decision in Ravipudi Abbayya Vs. State of Andhra Pradesh and Others, while dealing with the scope of the provisions of Madras Land Encroachment Act, has held as follows:

"It is clear from the reading of section 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. 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) if such notice is not obeyed directing removal of the 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 appearing commit him to close custody."

6. Admittedly in this case in spite of resistance by the petitioner and registering a case against the petitioner for such resistance, no enquiry has been conducted by the 2nd respondent- Collector to satisfy himself that the resistance by obstruction is without any just cause. The Apex Court also while construing the scope of A.P. Land Encroachment Act, has held as follows:

"8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the

Government only against persons who are in unauthorised occupation of any land which is "the property of Government. In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a persons is in unauthorised occupation of a land "for which he is liable to pay assessment u/s 3". Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or tide. In the instant, case, there is unquestionably a genuine ? dispute between the State Government and the respondents as to whether the three plots of land were the Subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than 12 years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees similarly, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the land of legal process which is suited to an adjudication of complicated question of title. That procedure is, therefore, not the due process of law for evicting the respondents.

7. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of a very recent origin", cannot be stretched too far. That was also the view taken by the learned Single Judge himself in another case which is reported in *Meharunnissa Begum v. Slate of A.P.*, 1970 (I) A. L.T 88, which was affirmed by a Division Bench *Meharunnissa Begum v. Government of A.P.* It is not the duration, short or long, pf encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the enroachment is alleged to have been committed and the

consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute a title between the Government and the occupant must be adjudicated upon by the ordinary courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

8. The conspectus of facts in the instant case justifies the view that the question as to that title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily."

9. Even the Division Bench of this Court, in the decision in Abdul Rashid Sahib Vs. The Assistant Engineer (Highways) Kallakurichi and Another, , while upholding the validity of the provisions of the Tamil Nadu Land Encroachment Act and while dealing with the contention of the petitioner therein that they have been in possession of the land over many years and so summary eviction cannot be permitted, has come to the following conclusion:

"On the other ground for the petitioner, we are inclined to think that having regard to the fact that the petitioner and his predecessors-in-title have been in possession of the land over many years, at least from 1915 as we are told, which is not seriously denied, and that it has been built upon, and the building has been used since construction, it cannot be said that in offering resistance to summary eviction, the petitioner does so without just cause, for, his claim based on long possession and ownership has to be investigated in a properly instituted suit. Even in the order made by the District Revenue Officer, there is no denial of the petitioner's claim of long occupation, during which the land was built upon. Only he would say in his order that because the B. Memoranda were served and penalty levied on the petitioner, it followed that the ownership was with the Government. The matter may not perhaps be so simple as that, and it is but proper and reasonable that the claim is investigated, as we said, in a properly laid suit. We, therefore, accept the petitioner's second ground."

10. For the reasons stated above, and also on the basis of the decided cases cited above the proceedings taken by the respondents cannot be sustained in

law. Hence they are set aside and the respondents are directed to re-deliver possession of the lands to the petitioner Immediately. This order is subject to the result of the case pending before the civil court. With tile above observations, these writ petitions are allowed accordingly. No costs. Consequently, W.M.P. 15396 of 1999 is closed.