

(2017) 01 MAD CK 0117

In the Madras High Court

Case No : W.P. Nos. 9958 of 2012 and 19121 of 2012

K.K. Pudur Residence Welfare Association

APPELLANT

Vs

The District Collector Coimbatore District

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 CTC 392 : (2017) 1 MLJ 641 : (2017) 1 WritLR 657

Hon'ble Judges : Mr. Sanjay Kishan Kaul, CJ. and Mr. M. Sundar, J.

Bench : Division Bench

Advocate : Mr. R. Vijayakumar Additional Government Pleader, for the Respondent No. 1 in W.P. Nos. 9958 and 19121 of 2012; Mr. S. Su. Srinivasan and no appearance for others, for the Respondent Nos. 6 to 12, 14, 17 to 19, 21, 23, 30 to 32, 38, 42, 43, 45, 46, 48, 50 to 52, 54, 55, 61 to 63, 65 to 67, 71, 72, 74, 79, 82, 84 to 87, 90 to 93, 96, 98 to 100, 102, 103, 105 to 109, 112 to 116, 118 to 120, 122 to 127; Mr. K. Magesh, Advocate, for the Respondent No. 2 in W.P. Nos. 9958 and 19121 of 2012; Mr. M.L. Ramesh, Advocate, for the Petitioner in W.P. Nos. 9958 and 19121 of 2012; Mr. S. Prabhu, Advocate, for the Respondent No. 4 in W.P. Nos. 9958 and 19121 of 2012

Final Decision : Dismissed

Judgement

M. Sundar, J. - All the three writ petition, pertain to a common issue namely "encroachment on either side of a Public Road/Cart Track". Therefore, all the three writ petitions were tagged and heard together. We propose to dispose off all the three writ petitions by this common order.

2. We deem it necessary to set out the factual matrix containing facts that are necessary for clarity in understanding this order, sans unnecessary details, particulars and facts.

3. FACTUAL MATRIX :

(a) Originally a Cart Track, now a Public road over a stretch of 1 km or thereabouts being a main road branching off from Mettupalayam Thadagam Road

(Annaikaty Road to Kerala) and also access road inter-alia for the residents of the area which goes by the name K.K. Pudur and such residents are members of the writ petitioner Residents Association and the said cart track/public road is the subject matter of the instant writ petitions. Cart track/Public Road referred to supra is comprised in S. Nos. 54/2, 54/3, 56/2, 61/2, 62/3, 63/3, 64/2 and 65/2 [8 S. Nos. in all] in Koundampalayam Village, Coimbatore District.

(b) For the sake of convenience and clarity, the Cart Track/Public Road is hereinafter referred to as "said road". It is an admitted factual position as between the parties that the said road was 70 feet wide and 1 kilo meter long. It is also a further admitted position as between the parties that there are encroachments on either side of the said road that have reduced/shrunk the width of the 70 feet wide road to barely 15 feet.

(c) Besides the writ petitioner Residents Associations herein which are pursuing the three writ petitions, one St.Thomas Higher Secondary School, K.K. Pudur, Coimbatore is also said to be affected by this encroachment. The above said St. Thomas Higher Secondary School is hereinafter referred to as the "said school" for the sake of convenience, clarity and brevity. Said school would claim that this is the access road for it and it is noticed from the pleadings that the said school is located in an 8 acres campus.

(d) In this context, it is deemed relevant to set out that the encroachments on either side of the said road were declared as Slum area by TNSCB vide a Government Order being G.O.Ms.No.995, dated 14.06.1991.

(e) The said school filed a writ petition in this Court being W.P. No. 7769 of 2000 with a prayer to mandamus the District Collector to remove the encroachments on either side of the said road.

(f) In the above writ petition, the local Town Panchayat as well as the Executive Engineer of the Tamil Nadu Slum Clearance Board [hereinafter referred to as "TNSCB" for brevity] were also arrayed as respondents. This Court by order dated 04.04.2003, directed the District Collector to remove the encroachments in accordance with law and also stipulated that such removal should be done within a period of five months from the date of receipt of a copy of that order. In this Order, the undisputed position that the said road is a Panchayat Road was recorded.

(g) The above said order of this Court was carried by way of an intra court appeal by the TNSCB. The encroachers numbering 122 had also filed an independent writ appeal. Writ Appeal filed by TNSCB is W.A.No.1625 of 2003 and writ appeal filed by the encroachers is W.A.No.1941 of 2003.

(h) In and by a common order dated 06.06.2009 in the above said two writ appeals a Division Bench of this Court, confirmed the above said order of the learned Single Judge directing removal of encroachments. The Division Bench while confirming the order of the learned Single Judge added that the District

Collector shall give notice to the encroachers/occupiers and follow due process of law. Thereafter, much later, the District Collector conducted enquiry, pursuant to the above said orders of this Court and the same culminated in proceedings dated 16.06.2012 bearing reference in Na.Ka. No. 25186/2000/A1 [hereinafter referred to as the "impugned proceedings" for brevity].

(i) Notwithstanding the above, there has also been a letter communication from the Coimbatore Corporation being communication dated 15.04.2014 bearing Ref.Na.Ka. No. 2141/14/H1(West). This communication is from the information officer of the Coimbatore Corporation to one of the writ petitioner associations before us, in response to a query under the Right to Information Act ["RTI" for brevity].

(j) By this communication, the Coimbatore Corporation has clearly intimated one of the writ petitioner Associations that it shall be removing the encroachments in the said road after providing alternative site to the encroachers. In this communication of the Coimbatore Corporation it has also been stated that as on the date of the communication, General Election to the Parliament had been announced and that the implementation is intended be done after the elections.

(k) When things stood as above, K.K.Pudur Residents Welfare Association filed W.P. No. 9958 of 2012 [one of the three instant writ petitions] with a prayer to remove the encroachments in the said road. This writ petition is hereinafter referred to as "first writ petition" for convenience and clarity and the same was filed on 10.04.2012.

(l) Thereafter, the same Residents Association, on gaining knowledge about the impugned order of the District Collector dated 16.06.2012, filed another writ petition in W.P.No.1912 of 2012 [one of the three writ petitions herein] seeking issue of a writ of Certiorarified Mandamus assailing the impugned order of the District Collector, seeking to quash the same and also to mandamus the authorities to remove the encroachments. This writ petition is referred as "second writ petition" for the sake of convenience and clarity. Notices were issued in first and second writ petitions and were pending.

(m) When things stood as above, another Residents Association which goes by the name Nagammal Street Residents Association, filed W.P. No. 9477 of 2016 [one of the three writ petitions herein] seeking issue of a writ of Certiorarified Mandamus assailing the impugned order of the Collector and for a direction to the Coimbatore Corporation to abide by the above said communication dated 15.04.2014 wherein, it has stated that the encroachments shall be removed after providing alternate sites to the encroachers. This writ petition is hereinafter referred to as "third writ petition" for the sake of convenience and clarity.

(n) The prayers ad-verbatim in the first, second and third writ petitions have been extracted and set out supra in this order.

(o) In the three writ petitions separate counter affidavits were filed by the

District Collector, TNSCB, Coimbatore Municipal Corporation and the encroachers. When the three writ petitions came up before us on 24.11.2016, we inter alia directed the jurisdictional Tahsildar to prepare a plan after inspection of the said site namely the said road and submit the same in this Court.

(p) Pursuant to our order, the jurisdictional Tahsildar caused a inspection to be made on 16.12.2016. Notes of inspection and a plan were placed before us in the hearing on 04.01.2017.

(q) We have perused the rival pleadings, the records before us and also heard the counsel for parties in the three writ petitions.

4. DISCUSSION :

(i) There is no dispute that the said road was originally a cart track and is now a public road. There is also no dispute before us that the said road is the access road to the residents, who are members of the writ petitioner associations, as well as the said school, though there is a contention that there is also an alternate access road.

(ii) It is also not in dispute that the said road has been encroached on either side throughout the 1 km stretch owing to which that 70 feet road wide has shrunk and has become barely 15 feet wide.

(iii) The District Collector would take a stand that the encroachers have encroached upon the said road in and around 1979 whereas, the residents have moved in inter alia in 1980s and the said school was established only in 1985. It is the case of the District Collector as well as the revenue authorities that the residents and the said school should have been aware of the fact that the said road is encroached. District Collector would also take the stand that the encroachments are by the people who are economically poor and it may not be fair to dislodge them at this distant point of time, particularly in the light of the fact that TNSCB has declared the encroachments on either side of the entire 1 km stretch of the said road on 14.06.1991 as a slum area and has also spent sums of Rs.5.45 lakhs and Rs.14.20 lakhs for improvement of the houses in the encroached area as well as provision of basic amenities.

(iv) Pleadings of TNSCB is also on the same lines. TNSCB would pitch itself on its declaration under Section 3(1) of the Tamil Nadu Slum Clearance (Improvement and Clearance) Act, 1971 vide the above said G.O.Ms.No.995, Housing and Urban Development Department wherein and whereby the said encroachments in the said road were declared as a Slum Area pursuant to which the above said sums of money were spent on development.

(v) With regard to Coimbatore Corporation, in the pleadings an attempt has now been made to distance themselves from the matter by saying that they had not taken any action for removal of the encroachments for more than seven years as there was no direction to them in this regard. Interestingly, the above said communication dated 15.04.2014 wherein the Coimbatore Corporation, in

response to an RTI application [by one of the writ petitioner Resident Associations] had stated that they would remove the encroachment after providing alternate site to the encroachers has been completely side stepped though there is a specific mandamus prayer in this regard in the second writ petition.

(vi) As far as the counter affidavit of the occupants/encroachers are concerned, they would contend that they have been in occupation from 1970s. They would further contend that they belong to economically weaker section of the society, that the said school and residents who are in a better position [socially and economically] are trying to dislodge them. They would also contend that the said school and the residents came in much later after their occupation.

(vii) In the light of the above rival submissions we examined the impugned order of the first respondent District Collector. We notice that the District Collector has proceeded as if it is a straight forward adversarial litigation and proceeded mainly on the basis that the Residents Association and the said school on one side and the occupants/encroachers are adversarial. The District Collector has relied heavily on the fact that the occupants have come in 1970s itself whereas, the residents and said school came in later. The District Collector also has laid much emphasis on the fact that the occupants belong to economically weaker sections of the society and that they cannot be dislodged at this distant point of time. The District Collector would also go on to say that severe hardship would be caused to the occupiers/encroachers if they are dislodged now.

(viii) As stated supra, pursuant to our order, the jurisdictional Tahsildar had conducted an inspection and placed the notes of inspection and a plan before us. The plan, clearly establishes the encroachments as seen hereunder:-

(ix) We are of the view that the District Collector should have approached the issue from the perspective of removal of encroachment in a public road rather than treat it as some kind of adversarial issue.

(x) Once it is not in dispute that the said road is a public road vested in the local authority, occupation/encroachment for any length of time cannot confer any kind of indestructible right that cannot be disturbed. In other words, no occupation/encroachment of a public road can become indestructible owing to the length of time of occupation or social strata from which the occupants/encroachers hail.

(xi) Though TNSCB, has pitched itself on the declaration made under Section 3(1) of the Tamil Nadu Slum Clearance (Improvement and Clearance) Act, 1971 [hereinafter referred to as "Slum Act" for brevity] it is clear from the records that the occupied/encroached land never vested in TNSCB. It is admitted that the District Collector has sent a proposal to the Commissioner, Land Administration to alienate the land in favour of TNSCB. The said Proposal from the District Collector is dated 31.03.1993 and the letter bears reference No.24522/93/D4. There is nothing before us to show that the land in which the said road is situate

was either alienated in favour of TNSCB or vested in TNSCB. It is not the case of the respondents that the land ever vested in TNSCB.

(xii) Therefore, the said road continues to vest in the local authority and is undoubtedly public land.

(xiii) Merely because the encroachers/occupants have been there for a long period of time, because there is a declaration by TNSCB as Slum Area and because certain sums of money have been spent by TNSCB towards improvement of the said slum area towards provision of basic amenities it cannot be held that the occupiers/encroachers have acquired any right much less an indestructible right beyond the ambit of the State duty to remove encroachments.

(xiv) There was also an attempt to say that the Residents Association in these three writ petitions have been set up by the above said school to file the writ petitions. There is no doubt or dispute about the fact that the two Residents Associations herein and the school have a common cause qua removal of encroachments. Therefore, we do not find any force or substance in such a submission.

(xv) We are of the view that it is a sacred and sanctus duty of the State in general and the Revenue Authorities in particular to ensure that public roads are not encroached upon/occupied. Having allowed a public road to be encroached/occupied that too, to an extent wherein a 1 kilo meter stretch has been encroached on either side reducing a 70 feet wide road to a mere 15 feet passage of sorts by shrinking the same is clearly a failure and even a dereliction of duty on the part of the State. Having allowed this to happen, we are unable to accept the stand taken by the District Collector that the encroachers/occupiers cannot be disturbed at this distant point of time as they will be put to hardship.

(xvi) In the above context, it was brought to our notice that similar set of facts were dealt with by this Court, wherein this Court had directed removal of encroachments. It was brought to our notice that in the said matter, the order of the learned Single Judge is reported in AIR 2001 Mad 324 : 2000 Writ L.R.683 and the order of the Division Bench in the intra court appeal arising out of the order of the learned Single Judge is dated 05.07.2000. We have perused the said judgements wherein in similar circumstances, this Court has held that the local authorities are bound to maintain roads and water works properly and efficiently so that it serves all the citizens. It was also held that it is a duty cast upon the local authority to maintain the road in proper condition. It was emphasised that when it is brought to the notice of the State that there are encroachers in public roads and streets, it is the bounden duty of the authorities to go and remove the same. As the judgement of the learned Single Judge was upheld by a coordinate Division Bench of this Court, we deem it appropriate to extract one paragraph, namely paragraph 11 from the learned Single Judge's order which reads as follows:

"11. It is not open to the Corporation to say that it is not their responsibility. The

Corporation collects tax from the citizens. They are bound to maintain roads and water works properly and efficiently so that it serves all the citizens. There is a duty cast upon them to maintain the roads in proper conditions. Whenever it is brought to their notice that there are huts and encroachments on public roads and streets, it is their duty to act and take steps to remove the same. It does not lie in the mouth of the Corporation to say that it is the baby of the Tamil Nadu Slum Clearance Board. The right of a citizen is affected and in the fight between the Corporation and the Slum Clearance Board as to who should deal with the matter, it is the citizen, who is the ultimate sufferer. It is high-time, the Corporation wakes up to the realities and adopts a sense of responsibility and evince keen desire to discharge their statutory functions."

(xvii) We also deem it relevant to extract paragraphs 8, 9 and 10 of the Division Bench order which read as follows:

"8. However, Mr. R. Gandhi submits that Petitioner has no objection, if any scheme is framed by the Corporation of Chennai, which depends upon the availability of the place and its feasibility as per the facts of that case, and the decision of the Government. But the public road or the street vests with the State and the members of the public who are the beneficiaries are entitled to use them as road. But persons like Appellants, who have encroached the public way, and thus shortened the road without there being any legal right or any licence at any point of time, cannot ask for any scheme and under the circumstances, the direction issued by the learned single Judge to provide alternative accommodation is not sustainable and liable to be set aside.

9. We have heard the Learned Counsel for the parties and perused the materials on record. There is no dispute so far as the legal position is concerned that the affected party should be afforded an opportunity of being heard before taking any decision against them.

The only question before us is, as to whether these Appellants can challenge the order of the learned single Judge on the ground that they are in possession of the property for the last 40 years and they have not been heard. The Learned Counsel for the Appellants has not been able to show that the Appellants have any legal right except that they are in possession of the property for some years, that too, without disclosing the exact date of occupation and its continuation. In our considered opinion, mere possession on the public land will not give any right to the Appellants to get any indulgence from this Court, when admittedly, the disputed land is a public land. So far as the other point that whether the writ Petitioner has any right over the property is concerned, the same cannot be challenged at this stage by the Appellants for want of any legal right, as discussed above. That apart, this being a question of fact, it cannot be gone into at this stage. So far as the other argument of Mr. V. Raghavachari that till the alternative accommodation is provided to the Appellants they should not be evicted is concerned, the same cannot be accepted on the alleged facts of the case as discussed above. So far as the argument of the Learned Counsel for the

Appellants that the Slum Clearance Board is not providing any scheme is concerned, in view of the submissions made by the Learned Counsel for the Slum Clearance Board that the disputed area has not been declared as a slum area, nor public road can be declared as such, and therefore, no scheme can be prepared, and also considering the fact that nothing has been placed on record to show that the disputed area has been declared as a slum area, this contention cannot be accepted. Therefore, the direction to the fifth Respondent/Tamil Nadu Slum Clearance Board to assure that the evicted persons are rehabilitated cannot be taken in this way viz, till they are provided alternative sites, they should not be evicted. We are of the clear view that this direction will not debar the Corporation to take necessary action as per the directions of the Court and in accordance with law. So far as, the formation of a scheme is concerned, as stated, all these things depend upon the fact, that the area occupied by the persons should be declared as slum area as per Section-36 of the Act and upon the availability of place identified by the Corporation, and other factors including feasibility. As stated, in the present case, Appellants are neither licensees nor have they any legal right to occupy the place which is a public road. Therefore, the direction issued by the learned single Judge is not sustainable to this extent and is liable to be set aside in the facts of the given case.

10. On overall consideration, we are of the firm view that the wrong doers cannot seek indulgence, nor this Court will issue direction to perpetuate the illegality in exercising the power under Article 226 of the Constitution. In view of what we have discussed above, the direction issued to provide alternative site will not come in the way of the Corporation in removing the encroachments and the Corporation is free to remove them. We find no error or illegality in the order of the learned single Judge, to this extend. With the above observations the Writ Appeal is dismissed. No costs. Consequently, C.M.P. Nos. 7895, 7896 and 7954 of 2000 are also dismissed. However, the Government is also free to consider the formation of any scheme to rehabilitate the persons like Appellants, in accordance with rule law."

(xviii) We agree with the view taken by a coordinate Bench of this Court and we take a similar view in the instant case, particularly in the light of a categorical letter from the Coimbatore Corporation dated 15.04.2014 bearing Ref.No. Na.Ka. No. 2141/14/HT west, which has been referred to supra, wherein and whereby the Corporation has stated that it shall provide alternate sites for the occupiers/encroachers and remove the encroachment from the said road and has also stated that they intend to do so after the National General Elections in 2014, we deem it fit and appropriate to direct the Coimbatore Corporation to do the same.

(xix) We also are of the view that if the Coimbatore Corporation is directed to provide alternate sites to the occupiers/encroachers and thereafter remove the encroachments as already envisaged/intimated by them, it would alleviate the difficulties of the occupiers and would also ensure that the encroachments in public road are removed.

(xx) We are of the view that this would sub-serve the interest of one and all and would also ensure that public roads are maintained as such and serve the purpose which they are intended to.

5. CONCLUSION :

(i) The impugned order of the Coimbatore District-Collector dated 16.06.2012 bearing Na.Ka.No.25186/2000/Aaa1 is set aside and quashed.

(ii) The Corporation of Coimbatore is directed to abide by the recitals of their letter communication dated 15.04.2014 in Na.Ka. No. 25186/2000/Aaa1, wherein and whereby the Coimbatore Corporation had stated that it would provide alternate sites to the occupiers and remove the encroachment.

(iii) All the respondents are directed to remove the encroachment [subject to (ii) supra] being encroachment in the 1 km. stretch comprised in S. Nos. 54/2, 54/3, 56/2, 61/2, 62/3, 63/3, 64/2 and 65/2 [8 S.Nos. in all] in Koundampalayam Village, Coimbatore District.

(iv) The respondents are directed to comply with (ii) and (iii) supra within a time frame of six months from the date of receipt of this order.

(v) Considering the nature of the matter and the trajectory the proceedings have taken the parties are left to bear their respective costs.