
(2002) 02 MAD CK 0064

In the Madras High Court

Case No : W.A. No. 2199 of 2001 and W.A.M.P. No's. 17354 and 17355 of 2001

Kudiyeruppor Nala Sangam

APPELLANT

Vs

The Commissioner, Land Assignment, Chennai-5 and Another

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) 02 MAD CK 0064

Hon'ble Judges : B. Subhashan Reddy, C.J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for R. Sankarasubbu, for the Appellant; T. Kokilavani, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—Writ Petition No.21111 of 2000 was filed by the Principal of S.R.M. Dental College, praying for directions to

the respondents/ Governmental and local authorities to remove all the existing encroachments between the whole stretch of Bharathi Salai and

Thiruvalluvar Salai in Ramavaram, Chennai.

2.Writ Petition No.3045 of 2001 was filed by Kudiyiruppor Nala Sangam, representing the interest of the occupants in the disputed area

(appellant herein) praying for directions to the respondents to issue patta to the members of Sangam, claiming to be in possession of the area for

more than 10 years.

3. During the hearing of both the writ petitions before the learned single Judge, an offer was made by the Government to allot alternate site to all

the members of the petitioner/Sangam in Survey No.239/2, Eri Poramboke, Ramavaram Village, subject to the members vacating their occupation

of the disputed area. After several adjournments at the instance of the appellant/ Sangam, finally, an affidavit dated 10.9.20 01 had been filed

accepting the alternate site provided by the Government subject to the availability of the land in Survey No.239/2. The learned single Judge had

also recorded a finding that the admitted position was that the encroachments in Tiruvallur Salai had already been evicted.

4. Consequently, the learned single Judge dismissed W.P.No.21111 of 2000 filed by the College on the ground that as a result of the removal of

the encroachments, any direction for removal did not arise. As regards W.P.No.3045 of 2001 filed by the Sangam/appellant, the learned Judge

held that in view of the offer of the Government to allot alternate site in Survey No.239/2 and the acceptance of the same by the Sangam, it was

not necessary to go into the merits and that it was sufficient to direct the Government to provide alternate site to the members by demarcating the

plots on or before 19.9.2001 and that the members of the Sangam shall occupy the plots on or before 26.9.2001. It was further directed that in

the event of the failure to remove the encroachments and vacating the lands, the District Collector was "at liberty to evict and remove all the

encroachments and the members of the petitioner Sangam will have no right to seek for any alternate accommodation. The Sangam has now come

forward with the present appeal.

5. Mr. N.G.R. Prasad appearing for the appellant contends that the alternate site offered by the Government was not at all suitable for certain

reasons and that in fact there was no adequate space to accommodate the members of the Sangam. The place was actually ear-marked for the

formation of the Metro Rail Project. According to him respondents have not pleaded the correct facts before the learned single Judge as regards

the actual topography of the land in Survey No.239/2 and had played a fraud on the Court. We have also perused the affidavit filed on behalf of

the appellant in support of their contentions. Learned Government Pleader contends that the appeal itself is not maintainable as the same is directed

against a consent order. The appellant has not stated correct facts regarding the topography of the land and that there was sufficient space to

accommodate all the members of the Sangam as undertaken by the Government. The action of the appellant lacks bona fides. In fact most of the,

members have agreed to take over the alternate allotment and had moved over to the allotted site and that trouble was being created only by one

or two persons who had very strong personal and vested interest and they were not actually pleading the cause of the poor. The disputed portion

is a public road which had to be cleared as a result of the growing traffic and the encroachers cannot claim any fundamental right to occupy a road

resulting in blocking the traffic.

6. Mr. K.S. Natarajan appearing for the College has also reiterated the submissions of learned Government Pleader.

7. We have considered the rival contentions and also perused the affidavits filed by both sides. In view of the nature of disposal of this appeal, we

decline to enter into the merits of the contentions raised by both parties. It is sufficient to point out that the order of the learned single Judge is in

essence a consent order and the learned single Judge had also indicated that he was not inclined to go into the merits of the case in view of the

offer and acceptance of the alternate site. The fact that the disputed area is classified in the Revenue records as ""Vandipatthai and Neer nilai

poramboke"" (cart track and Eri Poramboke) is admitted by the appellant vide their affidavit in W.A.M.P.No.17355 of 2001. Therefore, the

appellants cannot claim any vested right to remain in possession of the area when the same is required by the Government for regulating the

increased traffic. Rightly the Sangam had agreed to accept the alternate site offered by the Government and had accepted an order from the

learned single Judge. In the said background we are unable to appreciate the Sangam filing an appeal. If they have any genuine grievance about the

feasibility of the offer made by the Government on any ground, the proper course would be to have approached the learned single Judge himself.

Whatever grounds which are now pleaded before us namely, that there was no adequate space available for allotment, that the Government had

not placed all the relevant facts about the actual topography of the land or that the Government had played fraud on the court etc. are all matters

which should have been brought to the notice of the learned single Judge himself either by way of Review or for clarification. If there is any

violation of or non-compliance of the order of the learned single Judge, there are other remedies open to the appellants. On the face of the

allegations projected before us, it will not be in consonance with the judicial decorum to entertain the above appeal.

8. A further contention which was raised by the appellant is to the effect that the College itself had encroached a very large extent of public land in

the area and that the Government was adopting double standards in implementing the alleged action for removal of the encroachments. In the

affidavit in support of W.A.M.P.No. 17354 of 2001, the appellants have contended that the College authorities had encroached the Government

land for more than 10 acres and had even requested the assignment of the land and that the said request was rejected by the authorities. The

College authorities have also put up several buildings unauthorisedly without planning approval. In this context, to our specific question to the

learned counsel representing the College as to whether the said allegations are true, he was unable to furnish any definite reply in the absence of

instructions.

9. This issue had not been gone into by the learned single Judge presumably because either the said issue had not been raised before him or that he

had specifically decided not to go into the merits of the mutual contentions considering that the writ petitions were being disposed of only on the

basis of the offer and acceptance of the alternate site. Therefore, the learned single Judge had no occasion or necessity to deal with said issue.

10. It is needless to point out that the Government cannot adopt double standards in enforcing law and order and clearing of illegal encroachments.

If the encroachment of public land by the poor is bad, illegal occupation of such land by rich people and Institutions would be worst. The very

reason or justification to take steps to clear the encroachments, loses its credibility if the Government turns a blind eye to the illegal occupation of

public lands by rich and well-to-do persons. Courts are bound to respond positively and with even hands while dealing with such allegations.

It will be useful to bear in mind that it is the College authorities who had approached this Court first with the complaint of illegal encroachment

against the members of the Sangam. If they are themselves guilty of encroachment, they should also face the consequences. Therefore, the second

respondent is directed to take positive steps in the said direction if the College is found to be in illegal occupation of any public land. The second

respondent is directed to take steps in accordance with law and after due notice and hearing of the College authorities and the actual occupants in

possession of the encroached portions and to evict them from such illegal occupation. These directions shall be complied within a period of three

months from the date of receipt of a copy of this order.

11. In the result, the above Writ Appeal is dismissed with the above observations.