

---

**(1997) 04 MAD CK 0127**  
**In the Madras High Court**

Mr. Annamma Joy, Director Q. Flex Cables Ltd.

APPELLANT

Vs

The Collector and Others

RESPONDENT

---

**Date of Decision :** 30-04-1997

**Acts Referred:**

Land Encroachment Act, 1905 — Section 6, 7

**Citation :** (1998) 1 MLJ 74

**Hon'ble Judges :** E. Padmanabhan, J

**Bench :** Division Bench

---

**Judgement**

E. Padmanabhan, J.—The petitioner prays for the issue of writ of mandamus directing the respondents not to demolish the Northern and Eastern side compound walls situ-ate abutting the property and measuring acres 10.00 cents and building of the petitioner company in Survey Nos. 172/1 and 172/2 in Melakkottaiyur Village, Chingleput Taluk, Chengai-MGR District and to pay damages of Rs. 2,00,000 to the petitioner company.

2. The petitioner is one of the Directors of M/s. Q. Flex Cables Limited, who had purchased land in Melakottaiyur Village for the purpose of locating a factory for manufacturing cables and allied products. When the lands were purchased during June, 1993, the entire extent of the Northern and Eastern side of the property were occupied hut dwellers and those occupations were in respect of Government lands. The petitioner states that as access to the property was blocked by huts, the huts were removed on their paying compensation to the hut dwellers. According to the petitioner, under agreement executed in March, 1994, the hut dwellers, had agreed to remove the huts within few days and the hut dwellers have also vacated after receipt of compensation. The petitioner states that the land situate on the Northern side and Eastern side of the land is vacant subsequent to the hut dwellers vacating the land on 25.6.1994. The petitioner further states that after the butts were removed, several the authorised persons attempted to put up huts once again and to avoid third parties tres-passing once again. The petitioner put up fencing on the northern side and eastern side of the

land which belong to the petitioner company.

3. Admittedly the lands which as the petitioner sought to fence belong to the State Government. The petitioner states that she had applied to the 1st respondent, District Collector for grant of lease of the land abutting petitioners' land by letter dated 24.6.1995 and the same is pending. The petitioner states that she had put up compound wall during July, 1993 which had been demolished by the respondents who came up with large force. The petitioner states that she had raised protest, but the compound wall run-ning to 2,000 feet had been demolished on 15.7.1995. The petitioner contends that the respondents had not followed the procedure prescribed under the Land Encroachment Act, 1905.

4. The petitioner further contends that the respondents ought to have adopted the procedure laid down under the Land Encroachment Act and should have heard the objections of the petitioner. It is also contended that the respondents have accomplished the eastern side compound wall of the petitioner without lawful authority causing damages and loss. The only contention that has been raised by the learned Counsel for the petitioner that the procedure under Land Encroachment Act has not been followed and no opportunity had been given to the petitioner, hence the present writ petition.

5. On behalf of the respondents, the first respondent, the District Collector had filed a detailed counter stating that the land comprised in Survey No. 166/1A 1 of Melakottaiyur Village is a Government Poromboke land. It is stated that when the petitioner Company attempted to trespass and started construction of compound wall by grabbing 2.5 acres of Government land, the attempt was taken notice on 10.6.1995 and the petitioner company was instructed not to grab or not to proceed with the construction of compound wall, though the Revenue Officials had day today warned the Writ Petitioner not to grab the Government land and not to put up a compound, petitioner persisted. On 30.7.1995 the Tahsildar, Chingleput, inspected the site and directed the petitioner company desist from enclosing the Government land. As the petitioner company failed to comply with the direction, the respondent had taken action to protect the Government land.

6. It is also contended that is well open to the respondent to resist and grabbing and it is also open to the respondents to use such force as may be required to protect its own property and the respondents cannot be a silent spectator of such events when in the pres-ence of Revenue Officials, the petitioner attempts to grab the land and proposes to put up compound wall, enclosing the Government land. It is further pointed out that the petitioner's suggestion that they have removed the huts are all not relevant. It is only the action of the petitioner attempt to grab the Government and in their attempt to annex the same to the Patta land which was resisted by the respondents timely action. It is not the case of the petitioner that they are in possession for a number of years. Nor their en-croachment had been permitted under "B" Memos and as such when any one attempts to grab or encroach the Government land, it is open to the respondents to remove such encroachments and there is no requirement to initiate action as

sought to be contended.

7. It is further stated that to safeguard the patta land it is for the petitioner to fence or put up a compound wall enclosing their patta land and the petitioner cannot be allowed to raise the compound wall encroaching the Government land. It is true that the petitioner had applied for lease on 24.6.1995 but the petitioner attempted to grab, attempted to enclose of Government land on 10.6.1995 with a view to grab the Government land. The Application for grant of lease is nothing but an after-thought to get rid off the eviction by the local Tahsildar.

8. It is contended that gross encroachment on the Government Poromboke land cannot be allowed and it is well open to the respondents to resist such encroachments and also use so much of force to safeguard the Government land from being trespassed or occupied by high handed action of the petitioner. Dispite instructions and directions of the local Tahsildar and Revenue Officials, the petitioner started construction of compound wall to enclose the Government poromboke land. This tendency of grabbing should be put an end, hence the Revenue officials taken action to save the Government land and also put an end to the act of the petitioner annexing the Government land without permission to the petitioners' adjacent land. Even after repeated instructions, the petitioner failed to stop the construction of compound wall and the petitioner was persisting in proceeding with the construction hence action was taken to remove the portion of compound wall which has been put up without permission.

9. It is submitted that there is no requirement to follow the Land Encroachment Act, 1905, as the petitioner was prevented from grabbing and constructing permanent structure enclosing the Government land. The petitioner a land grabber and the respondents have every right to resist the petitioner's attempt. It is further pointed out that it is well open to the respondents to protect Government property by immediate action and curbing of encroachment at initial stage, which is a necessity to protect the Government land.

10. Heard the Counsel for the writ petitioner at the time when the petition for injunction in W.M.P. No. 14905 of 1995 and to vacate injunction in W.M.P. No. 4384 of 1996 were listed for hearing. Both the parties agreed for final disposal. Accordingly this Court heard the writ petition.

11. The only point that has been raised by the learned Counsel for the petitioner is that the respondent should have taken action under the Land Encroachment Act, 1905 and the encroacher should have been given an opportunity. In this respect, the learned Counsel for petitioner relies upon a judgment of this Court reported in B.M. Habibullah, etc. etc. Vs. State of Tamil Nadu and Others, , in the said case, AR. Lakshmanan, J. had elaborately considered the question relating to removal of encroachers from Government land and had emphasised that to remove the encroachment the minimum requirement as prescribed by Sections 6 and 7 of the Land Encroachment Act should be followed. There is no quarrel with respect to the proposition laid down by the learned Judge AR. Lakshmanan, J.

had reiterated earlier pronouncements of this Court. The reliance placed by the petitioner on the said decision is a misconception and it is clearly distinguishable on facts. It is not as if the petitioner had completed his encroachment and she is in occupation for a number of years or her en-croachment has been recognised on payment of en-croachment fees or penal charges under "B" Memos.

12. From the counter, it is evident that the petitioner attempted to grab the Government land. The respondents have warned the petitioner and when the petitioner persisted in the construction of enclosure, im-mediately action has been taken and the respondents resisted the attempt of the petitioner to grab the Government land and to enclose with her patta land. The attempt of the petitioner is to grab the Government land and to annex with the petitioner's adjacent land. It is well open to the respondents to take immediate action to protect the Government land and to resist the petitioners to attempt grab the Government land. It is well open to the respondents to protect the Government land from encroachments.

13. Admittedly, the petitioner has no fundamental right to encroach upon the Government land, and it is not as if the petitioner has secured permission to occupy and it is also admitted that the petitioner had not been assessed to penal assessment. It is timely prevention of the attempt of the petitioner to grab and put up compound well enclosing the Government land, by the respondents and as they have taken timely action. It should be appreciated. If the encroachment of the petitioner is allowed to be completed, it is nothing but criminal trespass. It is well open to the respondents and their subordinates to resist the encroachment of the Government land when they notice that some one like the petitioner attempts to grab or put up construction or enclose. The trespassers like the petitioner should not only be removed, must be desisted at the earlier stage, which the respondents have rightly done. In the circumstances, it is a misconception to contend that the respondents should allow the petitioner to complete the enclosure and thereafter should take action under the Land Encroachment Act.

14. The protection of the Government land from being occupied by trespassers or grabbers, is an essential duty and obligation on the part of the respondents and it has to be placed and the respondents have taken timely action before the act of land grabbing is completed. Even at the inception itself, the respondents have warned the petitioner and directed the petitioner not to grab the Government land. The motive of the petitioner is obvious and the petitioner is interested in grabbing the land and it is not as if the petitioner had approached the respondents with a bona fide intention. It is nothing but a criminal trespass, and it is well open to the respondents to protect the Government land from such trespass.

15. Even in the case of encroachment, what is required is a mere notice and to remove within a specified time and thereafter it is open to the respondents to have it removed. The Supreme Court in Ahmedabad Municipal Corporation Vs.

Nawab Khan Gulab Khan and others, , had considered the scope of application of principle of natural justice in respect of the removal by the Municipality. The Apex Court had held thus:

The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the attention of the petitioner and dismiss the writ petition with costs of Rs. 3,500 (Rupees three thousand and five hundred only) to the first respondent. Consequently, W.M.P. No. 14905 of 1995 is dismissed and W.M.P. No. 4384 of 1996 is disposed competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or conveniences for passing or repassing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and timeconsuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant Corporation is not violative of the principle of natural justice.

16. It has been emphasised and also pointed out by the Apex Court that what requires to be done by the competent authority is to ensure constant vigil on encroachment of public places. It has also been emphasised that if the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure or opportunity of hearing which would be a tedious and timeconsuming process leading to putting a premium over the high-handed and an authorised acts of encroachment. [Emphasis

applied].

This observation of Apex Court clearly apply to the present case.

17. In the circumstances, this Court rejecting the con-