

(1997) 02 MAD CK 0135

In the Madras High Court

Case No : Writ Petition No. 4476 of 1986

P. Mohan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Constitution of India, 1950 — Article 141, 19(1), 21, 32

Citation : (1997) 2 CTC 157

Hon'ble Judges : Sathasivam, J

Bench : Single Bench

Advocate : K. Chandru, for the Appellant; T. Kokilavani, Government Advocate for Respondent Nos. 1 and 2, P. Srinivas and K. Venkateswara Rao, for the Respondent

Judgement

Sathasivam, J.—This is a public interest litigation filed by One P. Mohan Town Secretary, Communist Party of India (Marxist) Madurai

seeking issuance of a writ of mandamus restraining the respondents from evicting any occupant in any slum area in the City of Madurai

Nambinagar, Hiranagar, Hiranagar Vaikalkarai, Thideernagar 6th Block, Thideer Nagar, Burma Nagar, Alaudin Thoppu, Subramaniapuram,

Kamarajapuram and East Madurai without following the directions of the Supreme court dated 17.10.1985 made in W.P. No. 3695 of 1983.

2. The case of the petitioner as seen from the affidavit is briefly stated hereunder:-

According to him, the people are residing in the above referred areas for a long time and some of them as many as from decades. The third

respondent, namely, Madurai Corporation itself had recognised their existence and have provided for electric lights and sanitary facilities. They are

also collecting property tax and have installed separate electric meters for consumption of electricity. Land revenue is also collected by the

Subordinates of the second respondent. Many houses in that area are pucca buildings with concrete roofings etc. Some of the residents have also

got telephone connections. During October, 1982 the respondent started evicting the slum people on the alleged ground that they were all

trespassers. They started demolishing their houses along with the fourth respondent without any notice. The slum dwellers in these areas are mainly

engaged in occupations such as Rickshaw pulling Masonary, Carpentry, construction workers, sweepers, cobblers, street hawkers etc., They

have been in occupation of these areas since 1949 and they had to occupy these areas for lack of any other alternative. It is also averred that the

eviction of the slum people would deprive the residents of their very right to life and liberty as well as basic means of living and it would deprive

them of the valuable rights conferred by Article 19(i)(d) and Article 21 of the Constitution. In view of the threat of eviction, one of the petitioner's

party member and another moved the Supreme Court by way of a writ petition under Article 32 of the Constitution and also obtained an interim

injunction against the eviction of these people. The Supreme Court in W.P. No. 3695 of 1983 following the earlier decision in W.Ps. Nos. 8927

and 9380 of 1981 K. Chandru Vs. State of Tamil Nadu and Others, disposed of their writ petition. In the said judgment the Supreme Court, on

the basis of the undertaking by the State of Tamil Nadu has passed directions that these people will not be evicted without providing alternate

accommodation to them. It is further averred that the said direction given by the Supreme Court is binding on all the respondents herein and they

are bound to carry out the orders of the Supreme Court in toto. Instead of obeying the directions of the Supreme Court, the fourth respondent has

now issued notices to all the residents purporting to act u/s 4(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The

Divisional Manager of the Madurai Division of the Southern Railways was a party to the proceedings in W.P. No. 3695 of 1983 and the direction

given by the Supreme Court was fully binding on them. In those circumstances, the petitioner has approached this Court for appropriate direction.

3. The respondents 1 and 2 filed a common counter affidavit wherein it is contended that at the instance of railway authorities, the stay granted in

W.P. No. 3695 of 1983 has been vacated by the Supreme Court, hence the Revenue Divisional Officer, Madurai and the Tahsildar, Madurai

South have been instructed by the 2nd respondent to take necessary action to evict the encroachments existing in the Railway lands after providing

alternative accommodation to the encroachers concerned. The Commissioner, Corporation of Madurai and the Railway authorities have been

vested with powers to evict the encroachments, in the lands under their jurisdiction. It is also averred that there are a number of encroachments in

the railway lands, which exist in the above areas, by putting up huts for shops and dwelling purposes on both sides of the Railway track on

Madurai-Manamadurai lane. The Railway authorities approached the Collector of Madurai in the year 1980 for the eviction of encroachments and

rehabilitation of the encroachers. As already stated, the Supreme Court in the above referred case, has vacated the stay granted earlier with a

direction to the Government of Tamil Nadu to give existence alternative accommodation to the encroachers who occupied prior to 30.6.77, before

eviction. In order to implement the direction of the Supreme Court, the enumeration of the encroachments in the Railway lands was taken up by

the Railway authorities and notice under Form-A under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were issued by the

Estate Officer to the encroachers based on the enumeration. The respondents 1 and 2 have denied the other facts regarding the existence of their

names in the Voters' List and other particulars regarding payment of property tax etc., It is also averred that the slums mentioned above are

causing serious problems to the railway administration as the embankment is disturbed, steel parts of the track are pilfered in spite of railways best

efforts to prevent such illegal acts involving safety hazards to the train movements. The encroachers on the railway lands are obstructing free flow

of water near the bridges along side the railway track. The encroachments in Kurudhumal river (Thideer Nagar Vaikkalkarai) causes obstruction to

the flows of drainage and rain water and flooding central bus stand and portions of the Town. During heavy rains, the water from Kiruthunal river

surround the Madura College Buildings on all sides. The entrance and pathway to the College, the play-ground, the hostel buildings, auditorium

were water logged. It is also once again reinforced in the counter affidavit that in view of the orders passed by the Supreme Court the

encroachments could not be evicted by the respondents, provision of alternative accommodations to the encroachers has to be decided only after

the enquiry of each and every individual case and after gathering particulars regarding their original status. It is also stated in the counter affidavit

that the Revenue Officials have not taken any action in violation of the orders passed by the Supreme Court in W.P. No. 3695 of 1983.

4. Fourth respondent, namely, Southern Railway has also filed a similar counter affidavit. In the said counter affidavit they have narrated that the

encroachments on the Railway land along side the Railway line is posing maintenance and safety problems to the administration and will also cause

hindrance to future developmental works. The encroachments made on the railway land are causing hindrance to the Railway working. It is also

stated in the counter affidavit that in pursuance of the Supreme Court Order, enumeration was taken up and notice in Form-A under Public

Premises (Eviction of Unauthorised Occupants) Act, 1971 were issued during the end of April, 1986 and May, 86. It is open to the encroachers

to explain the circumstances under which they should not be evicted. It is also submitted that the encroachers on the Railway land are tampering

with the railway embankment and also obstructing free flow of water near the bridge alongside the railway track. The problem of encroachments of

railway land and the activities of the encroachments is creating serious problems in the matter of safety to the railway track and running of trains.

5. I have heard Mr. K. Chandru, learned counsel appearing for the petitioner, Mrs. T. Kokilavani, learned Government Advocate for respondents

1 and 2, Mr. P. Srinivas, learned counsel for third respondent and Mr. K. Venkateswara Rao, learned counsel for 4th respondent. In the light of

the pleadings of all the parties, I have considered their rival submissions.

6. In the counter affidavit filed by respondents 1 and 2 they have come forward with the statement that they have not taken any steps to evict the

occupants in slum area contrary to the order of the Supreme Court dated 17.10.1985 made in W.P. No. 3695 of 1983. On the other hand, it is

their case that since the railway authorities moved the second respondent, viz., the Collector of Madurai, who in turn directed the Tahsildar,

Madurai South to enumerate the encroachers as per the order of the Supreme Court. They have also made it clear that providing alternative

accommodation to the encroachers have to be decided only after enquiring each and every individual case and after gathering particulars regarding

their original status, income and other antecedents. They have also reiterated that the Revenue Officials have not made any action in violation of the

Order passed by the Supreme Court in W.P. No. 3695 of 1983.

7. In view of the categorical averments made in the counter affidavit filed on behalf of the respondent 1 and 2, the petitioner need not have any

apprehension. Mr. K. Chandru, learned counsel appearing for the petitioner submitted that even though by subsequent judgment, this court as well

as the Supreme Court has diluted the earlier order of the Supreme Court, in view of the fact that all the respondents are party to the earlier

proceedings, namely, W.P.3695 of 1983 wherein the Supreme Court has disposed off the said writ petition in the light of the principles laid down

in K. Chandru Vs. State of Tamil Nadu and Others, , whatever the direction issued by the Supreme Court in pursuance of undertaking given by

the respondents including the railway administration is binding. The Supreme Court in the said petition has made the following observation and the

same is extracted hereunder:-

The writ petition is disposed of with the order that the observations and directions given in the judgment of this Court dated July 10, 1985 in Writ

Petitions Nos. 8927 and 9380 of 1981 K. Chandru Vs. State of Tamil Nadu and Others, , will apply to this petition".

In the earlier decision, namely, K. Chandru Vs. State of Tamil Nadu and Others, , the Supreme court has directed the respondents as follows:-

The State Government will do its best to provide alternative accommodation to these among them who are able to show that they were living on

payments before June 30, 1977. In so far as the slum dwellers are concerned, the counter affidavits filed on behalf of the respondents contain an

assurance that it is the Policy of the State Government not to evict such of them, as were living in the slums prior to June 30, 1977, without

providing alternate accommodation to them. That assurance will bind the Government. In so far as the other slum dwellers are concerned, they too

will not be evicted before December, 31, 1985 unless the land on which any slum stands is required by the State Government for an urgent public

purpose. In the event that it becomes necessary to evict any of the slum

dwellers belong to this category prior to December 31, 1985, the State Government will have liberty to apply to this Court.

Inasmuch as the said orders have been passed by the Supreme Court in pursuance of an undertaking given by the Government of Tamil Nadu, the argument of Mr. K. Chandru that without providing alternative accommodation is to some extent well-founded. It is relevant to note the prayer in

the writ petition reported in K. Chandru Vs. State of Tamil Nadu and Others, . In the said writ petition filed under Article 32 of the Constitution of

India, the writ petitioner sought for a writ of mandamus restraining the respondents from evicting the slum dwellers and pavement dwellers in the

City of Madras, without providing alternative accommodation to them. The State of Tamil Nadu informed the Supreme Court that in the light of the

provisions of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, submitted that they have no intention to evict any of the

encroachers in the slum area without providing alternative accommodation. It is also relevant to extract the conclusion of the Supreme Court in the

said decision, which is hereby extracted:-

...The State Government will do its best to provide alternative accommodation to those amongst them who are able to show that they were living

on pavements before June 30, 1977 insofar as the slum dwellers are concerned, the counter affidavits filed on behalf of the respondents contain an

assurance that it is the policy of the State Government not to evict such of them as were living in the slums prior to June 30, 1977, without

providing alternate accommodation to them. That assurance will bind the Government. Insofar as the other slum dwellers are concerned, they too

will not be evicted before December, 31, 1985 unless the land on which any slum stands is required by the State Government for an urgent public

purpose. In the event that it becomes necessary to evict any of the slum dwellers belonging to this category prior to December 31, 1985, the State

Government will have liberty to apply to this Court.

As already stated, the above referred decision of the Supreme Court has been relied upon while disposing W.P. No. 3695 of 1983.

8. At the time of the argument, as directed by this Court, the learned Government Advocate received a letter from the Collector has informed the

Government Pleader with reference to the order of the Supreme Court referred

above. Para 5 of the said letter is relevant and the same is extracted hereunder:-

In respect of providing alternative sites to the encroachers as directed by the Supreme Court of India that there is no suitable site available in

Corporation area to accommodate the encroachers. Further the encroachers are not willing to occupy the land that may be available in rural area

as they feel shifting to the rural areas will affect their livelihood and therefore I would like to impress that status quo is maintained in aspect of

eviction proceedings and the orders of the Supreme Court of India and the High Court, Madras are strictly followed:

In the Light of the directions of the Supreme Court referred above and in view of the stand of the Government as seen from the letter of the District

Collector, Madurai, I am of the view that there is no doubt that the respondents 1 to 3 will make sincere efforts while evicting the encroachers by

providing alternative accommodation. It is needless to mention that in such event the encroachers have no right to dictate the Government or its

Officers with regard to the alternative place.

9. Coming to the stand of the Railway, namely, fourth respondent, in the light of the counter affidavit duly sworn by Additional Divisional Railway

Manager, Southern Railway, Madurai, Mr. Venkateswara Rao, learned counsel appearing for them brought to my notice the recent decision of this

Court rendered in W.P. No. 10397 of 1986 dated 2.12.1993. In the said case also, Southern Railway has been impleaded as first respondent.

Second respondent is the Tamil Nadu Slum Clearance Board and the third respondent is Government of Tamil Nadu. Housing and Urban

Development Department. When the first respondent, namely, Southern Railway in the said writ petition initiated steps to evict the encroachers on

the railway line, as per the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, after giving notice under the

said Act an Association representing the encroachers have approached this Court. Kanakaraj, J. after referring earlier decisions of the Supreme

Court with regard to encroachers on the public property and pavements, ordered the writ petition by passing the following direction:-

Having said so much I give below the following directions in the writ petition:-

(i) The first respondent shall take fresh action, if they so desire, to evict the

encroachers only after the Pongal Season in January, 1994;

(ii) The first respondent can take action to remove the encroachers only after issuing fresh notice u/s 4(1) of the Tamil Nadu Public Premises

(Eviction of Unauthorised Occupants) Act, 1971;

(iii) The first respondent shall give sufficient and reasonable time to the encroachers to vacate the subject area, if they hold against the occupants in

the enquiries to be conducted under the Act;

(iv) In the meanwhile all the respondents should put their heads together and see that the encroachers are given a proper alternative

accommodation. Though this direction is not mandatory and is not a condition for removing the encroachers, I made it clear that the respondents

should make a genuine attempt in this direction. ""Where there is a will there is a way.

10. Relying on the decision of Kanakaraj, J., Mr. Venkateswara Rao, learned counsel appearing for the fourth respondent submitted that in order

to provide better facilities to the public and also to implement various public schemes as well as considering the safety of the railway passengers, it

is but proper they have to evict the encroachers on the railway line. He also brought to my notice another latest decision of the Supreme Court

reported in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, . In the said decision the Supreme Court after referring

all the earlier decisions has observed 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 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 convenience for passing or re-passing 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 the 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 or 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 tardious and time consuming 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 best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers of 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 held that the action taken by the appellant Corporation is not violative of the principles of natural justice.

The Supreme Court further held:-

As regards the direction given by the High Court to provide accommodation as a condition to remove the encroachment, as held earlier, since the Municipal Corporation has a constitutional and statutory duty to provide means for settlement and residence by allotting the surplus land under the Urban Land Ceiling Act and if necessary by acquiring the land and providing house sites or tenements, as the case may be according to the scheme formulated by the Corporation, the financial condition of the Corporation may also be kept in view but that would not be a constraint on the Corporation to avoid its duty of providing residence/plot to the urban weaker section. It would, therefore, be the duty of the Corporation to evolve the schemes. In the light of the schemes now in operation, we are of the view that opportunity should be given to the 10 named petitioner-encroachers to opt for any one for the three schemes and the named two

persons who are carrying on commercial activities should immediately stop the same. If they intend to have any commercial activity or hawking, it should be availed of as per the directions already issued by this court in the aforesaid judgment and no further modification or any directions contra thereto need to be issued. Out of these 10 persons, if they are eligible within the terms of the schemes and would satisfy the income criterion, they would be given allotment of the sites or the tenements, as the case may be, according to their option. In case they do not opt for any of the schemes, 21 days" notice would be served on them and other encroachers and they may be ejected from the present encroachments. As regards other persons who have become encroachers by way of purchase either from the original encroachers or encroached pending writ petition/appeal in this Court, they are not entitled to the benefits given to the 10 encroachers.

As regards those who are eligible according to the guidelines in the schemes and also fulfill the income criterion, it may be open to the Corporation to extend the same benefits in either of the three schemes, if they so desire. It is, however, made clear that we are giving any specific direction in this behalf lest it would amount to encouraging the people to abuse the judicial process to avail of such remedy by encroaching public property.

In view of the above discussion, I give below the following direction in the writ petition:-

- (i) As and when any action is taken for eviction of the parties concerned in the writ petition, the same shall be subject to the directions of the Supreme Court dated 17.10.1985 made in W.P. No. 3695 of 1983;
- (ii) The fourth respondent can take action to remove the encroachers after issuing fresh notice u/s 4(1) of the Public Premises (Eviction of Unauthorised Occupants" Act, 1971);
- (iii) The fourth respondent shall give sufficient and reasonable time to the encroachers to vacate the subject area if they hold against the occupants in the enquiry to be conducted under the Act;
- (iv) The respondents 1 to 3 are directed to frame a scheme and see that the genuine encroachers are given proper alternative accommodation.

However, that does not mean that the encroachers can insist accommodation only in the existing nearby area.

11. Even though in view of the latest decision of the Supreme Court, namely

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and others, , providing alternative accommodation is not mandatory and not a condition for removing the encroachers since already there is a

direction by the Supreme Court in W.P. No. 3695 of 1983, dated 17.10.1985, I am constrained to pass such directions referred above.

12. The writ petition is ordered in the above terms. However, there will be no order as to costs.