

(1976) 06 MAD CK 0016
In the Madras High Court

P. Ramaswamy

APPELLANT

Vs

The Assistant Engineer, Highways and Rural Works
Department

RESPONDENT

Date of Decision : 24-06-1976

Acts Referred:

Citation : (1977) 1 MLJ 162

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner claims to be the owner of the premises No. 34-A, Thanjavur Road, in Vijayapuram, Tiruvarur. The

premises consists of S. No. 567/1 of an extent of about 12197 sq. ft. and S. No. 559 of an extent of about 3000 sq. ft. On. these two survey

numbers, the petitioner has constructed a saw mill and other superstructure consisting of 9 shops and one office-room. These constructions were

put up after getting the building plans sanctioned by Tiruvarur Municipality in the years 1962 and 1973.

2. However, the respondent with his men is said to have visited the premises on 27th January, 1975 and started demolishing the compound wall.

The petitioner immediately brought the matter to the notice of the District Collector, Thanjavur. Thereafter on 29th January, 1975, the respondent

again is said to have come to the premises and attempted to demolish the shops with the assistance of the men brought by him. The petitioner

resisted this attempt. Thereafter on 30th January, 1975 the petitioner was served with a memo, dated 29th January, 1975 which is to the effect that

as the petitioner has encroached on the load he must remove the encroachment within 24 hours. The petitioner, apprehending that the respondent

would demolish the existing structures in the premises, has approached this Court for the issue of a writ of certiorari to quash the proceeding of the respondent, dated 29th January, 1975 directing him to remove the encroachment within 24 hours.

3. The main contention urged by the petitioner is that even assuming that there is encroachment on the public road by the petitioner as alleged in the impugned memo., still the petitioner can be evicted only under the provisions of the Land Encroachment Act, that there is no proper notice informing the petitioner of any encroachment or demanding vacant possession from him, and that in any event, the respondent is not an officer for initiating eviction proceedings under the said Act. In the counter-affidavit filed, by the respondent, it has been stated that he is competent authority to take eviction proceedings u/s 6 of the Tamil Nadu Land Encroachment Act, 1905 as per G.O. Ms. No. 786, Revenue, dated 10th April, 1968 and the Government Memorandum, dated 17th February, 1972. It has not been stated in the counter-affidavit whether notices under Sections 6 and 7 of the said Act had been issued or not. The mere statement of the respondent that he is competent to take eviction proceedings u/s 6 of the Act, cannot go to prove that in fact notices under Sections 6 and 7 had been issued by the respondent herein before the petitioner is actually evicted from the alleged encroached land.

4. The petitioner's case is that he is not an encroacher and that the entire land on which the saw mill and the other superstructures stand, belong to him. Therefore the petitioner could make his representation regarding his title to the disputed plot only when notices under Sections 6 and 7 are served on him. Though the counter-affidavit is silent on the question as to whether notices u/s 6 or 7 had been issued or not, the file produced by the Government Pleader shows that notices u/s 6 of the Act, have been despatched on 13th December, 1974 and 15th December, 1974. However, there is no indication from the file as to whether those notices had been served on the petitioner or whether notice u/s 7 has been issued prior to issue of Section 6, notice. Section 7 provides that before taking proceedings u/s 6, the person sought to be evicted should be served with a notice u/s 7. In this case, there being no notice u/s 7 served on the petitioner, the initiation of notice for summary eviction u/s 6 cannot be a proper

compliance with the provisions of the said statute. Therefore the impugned memorandum issued by the respondent stands vitiated. The writ petition is therefore allowed and the said impugned memo, is quashed. It will, however, be open to the respondent to initiate proceedings afresh under the said Act in accordance with law, if he has been authorised to do so under the Act. There will be no order as to costs.