
(1953) 04 MAD CK 0029

In the Madras High Court

Case No : Civil Revision Petition No's. 500 and 510 of 1952

Prodattur Municipal Council

APPELLANT

Vs

Gurnam Hanumanthu and Others

RESPONDENT

Date of Decision : 06-04-1953

Acts Referred:

Specific Relief Act, 1877 — Section 42
Tamil Nadu District Municipalities Act, 1920 — Section 61
Tamil Nadu Land Encroachment Act, 1905 — Section 2
Tamil Nadu Survey and Boundaries Act, 1923 — Section 14

Citation : AIR 1954 Mad 479 : (1953) 66 LW 1001 : (1953) 2 MLJ 614

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : P. Satyanarayana Raju and Y. Rami Reddi, for the Appellant; Kasturi Seshagiri Rao, Kasturi Sivaprasada Rao and K. Kuppuswami, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, J.—This is a batch of civil revision petitions which have been filed against the order made by the District Munsif of Prodattur

that the Collector is neither a necessary nor a proper party in several suits in which he was sought to be impleaded as a party-defendant.

2. The suits have been filed by certain residents of Prodattur against the Prodattur Municipality which has booked them in regard to certain

encroachments on road margins as per survey under the Madras Survey and Boundaries Act. These residents have filed these suits for declaration

of their title in respect of those lands forming the subject-matter of encroachment and eviction notices and for an injunction against the Municipality

from disturbing their possession. The Municipality contended that these properties were vested in the municipality only for municipal purposes and

that the grant of a declaration of title to the plaintiffs materially affects the right of the real owner, the Government, and that the Government would therefore be a necessary party. It is further urged that even if the suit is one u/s 14 of the Survey and Boundaries Act, inasmuch as the suits are between private persons and the Municipality who holds the suit property with a limited interest therein subject to the control of the Government, the real owner, the suits are bad for non-joinder of the necessary party, viz., the Government. I may point out here that this contention is supported by the Government.

3. The lower Court invoking the decisions in -- The Secretary of State for India in Council Vs. Sree Rajah Malraju Venkata Narasimha Rao

Bahadur and Another, and -- Kilaparti Appalanarasamma Vs. Commissioner, Municipal Council and Another, to the facts of this case and refusing

to apply the decision in -- G. Krishnaswami Naidu Vs. The Municipal Council and Another, held that the Government represented by the

Collector was not a necessary party in these suits for declarations and injunction and dismissed the contentions of the municipality. Hence these

civil revision petitions.

4. There can be no doubt that the position taken by the learned District Munsif is thoroughly incorrect. That these suit properties have only been

vested in the Municipality and that they must be held and used by it for the purposes of the Act and that this vesting does not make the municipality

the owner of the land and that the proprietorship is retained by the Government cannot be disputed and has been laid down in a long line of

decisions of the Madras High Court. "Bhashyam Aiyangar J. in -- "Sundaram Iyer v. Municipal Council, Madura", 25 Mad 635 (D) carefully

considered all the previous decisions and came to the conclusion that when a street is vested in a municipal council, such vesting does not transfer

to the Municipal authority the rights of the owner in the site or soil over which the street exists; but it has exclusive right to manage and control the

surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as

a street. It has also a certain property in the soil of the street which would enable it as the owner to bring a possessory action against trespassers.

In -- "Basaweswaraswami v. Bellary Municipality", AIR 1916 Mad 613 (E),

Sadasiva Aiyar J. expressed regret that the complication of English law has been introduced in this Presidency through the judgment of Bhashyam Aiyangar J. But the learned Judge also says that it is not too late to go back on those distinctions. Subsequently in -- Uppalapati Suryanarayaneswara Jogi Jagannadharaju Garu and Another Vs. Taluk Board and Others, the leading case relating to vesting was discussed and it was held that the property vested is such property and such property only as is necessary for the control, protection and maintenance of the street as a highway for public use. On this conclusion it follows that when there is a dispute between the Municipal resident and the Municipality and in which the declaration sought is such that in order to be binding, the ultimate owner also should be brought on record, the Collector will be a necessary party. Otherwise, any decree obtained by the citizen against the Municipality will not be binding upon the Government and can be set at naught by them. That is why in -- G. Krishnaswami Naidu Vs. The Municipal Council and Another, it was held that in a suit of this nature the Government was a necessary party to the suit.

On this footing -- Kilaparti Appalanarasamma Vs. Commissioner, Municipal Council and Another, " is no authority because it was a case where it was held that where the granting of the relief asked for in the plaint affected no right vested in Government, the Government was not a necessary party to the suit. Similarly -- The Secretary of State for India in Council Vs. Sree Rajah Malraju Venkata Narasimha Rao Bahadur and Another, " was a case in which the Government was not in the least interested in"" the result of the suit. Therefore, it was held that the Government was neither a necessary nor a proper party. In the present case the Government are vitally interested in the result of these suits and what is more without their coming on record there cannot even be a proper adjudication of title because as pointed out in paragraph 3 of G. O. No. 1789, Revenue dated 23rd July 1920, regarding the suits relating to encroachments in Municipalities, communicated to all Chairmen of Municipal Councils, it was necessary that in all suits relating to encroachments a copy of the notice of the intended suits should invariably be given to the Collector and that the Government be impleaded as a party to any suit in which it is desired to secure a longer period of limitation: -- "President, Sivaganga Taluk Board

v. Narayanan", 16 Mad 317 (G); -- "Municipal Council, Kurnool v. Subbanna", 33 Mad LJ 426 (H). The same procedure according to the

Government should be followed by the Presidents of Local Boards in the case of suits relating to encroachments within the areas under their

Boards. Annexure (paragraph 3) of G. O. No. 1789 Revenue dated 23rd July 1920.

As regards the question of defence of suits relating to encroachments on land vested in Municipal Councils, the Government considered that the

responsibility for preventing encroachments in Municipalities rests with the Municipal Councils in the first instance and that it is desirable to have the

Government impleaded as a party to secure the advantage of the longer period of limitation. G. O. Mis. 901 L. and M. 18th March 1925 Gazette

24th March 1925. The above notification can help the Local Boards in the matter of encroachments on roads on all public roads vested in any

local authority are the property of the Government; see Section 2(2) of the Madras Land Encroachment Act III of 1905. Of course these

considerations apply only when the Municipalities file suits against the citizens. I am mentioning them to show that in the instant case the

Municipality is justified in insisting upon the Government being brought on record because the Government are the ultimate owner and therefore the

party claiming declaration cannot short-circuit the longer period of limitation by impleading the municipality only.

5. Thus, to sum up, the Government is a necessary party because u/s 2 of the Land Encroachment Act the Government are the owners of all roads

and streets and u/s 61 of the Madras District Municipalities Act the Government as the owner of the public streets and appurtenances thereto can

vest them in any Municipality with power to withdraw any such street etc. from the control of the said municipality. u/s 14 of the Madras Survey

and Boundaries Act the plaintiff is required to join as parties all persons whom he has reason to believe to be interested in the boundary which is

the subject-matter of dispute. Therefore, inasmuch as the Municipality dealing with the street is subject to the control of the Government, the relief

of declaration which the plaintiffs in these suits seek cannot be granted without making the Government a party to the suits: -- Secy. of State and

Another Vs. M. Murugesu Mudaliar and Others, .

6. In the result, the orders of the learned District Munsif are hereby set aside and these civil revision petitions are allowed with costs.

7. In the circumstances of the case, I am sure that the Government will waive notice u/s 80 of the CPC as the municipality seeks to bring them on

record supported by the Government and it would be inequitable if they insist upon notice at this stage.