
(2005) 04 MAD CK 0164

In the Madras High Court

Case No : Writ Petition (MD) No"s. 1964 and 2100 of 2005

Ramaraju

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Constitution of India, 1950 — Article 21
Madurai City Municipal Corporation Act, 1971 — Section 471
National Highways Act, 1956 — Section 2, 2(2), 4, 5
Specific Relief Act, 1963 — Section 6
Tamil Nadu District Municipalities Act, 1920 — Section 162, 180, 180A, 181, 182
Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1976 — Section 2

Citation : (2005) 2 CTC 741

Hon'ble Judges : P.K. Misra, J;D. Murugesan, J;AR. Ramalingam, J

Bench : Full Bench

Advocate : V. Selvaraj, for N. Dhilipkumar, in W.P. No. 1964 of 2005 and T. Lajapathy Roy, in W.P. No. 2100 of 2005, for the Appellant; P. Srinivas, for Respondent Nos. 2 and 4 Municipalities and C. Selvaraj, Additional Government Pleader, for the Respondent

Judgement

1. These two public interest litigations have been filed on behalf of some of the residents of Rajapalayam in Virudhunagar District and Kodaikanal in Dindigul District respectively. The questions raised in both the writ petitions being similar, such petitions were heard together and shall be disposed by the common order.

2. W.P. No. 1964 of 2005 has been filed by a resident of Rajapalayam, who is running a Social Welfare Organisation, seeking prevention of eviction of poor people who are in occupation of Government poramboke lands in Rajapalayam Municipal Area. It has been stated in the affidavit that Malayadipatti Village in Rajapalayam Municipality has a total population of about 20,000 and even today, the authorities of the temple are demanding lease amount from the people stating that the lands are temple lands and on the other hand the fourth respondent Municipality continues to assess and collect property tax from the

people. It is further stated that the other areas like Avarampatti, Suraikaipatti, Ooranipatti, Amman Pottal Street, Sammandhapuram, Madasamy Koil Street public are also similarly placed and most of them do not have lands of their own and in all these areas there are nearly about 30,000 families who have put up houses in poramboke lands and the fourth respondent Municipality had also assessed and is collecting house tax from them.

2.1. It is stated by the petitioner that in view of the orders passed by this Courts in W.P.No. 689 of 2005 on 2.2.2005 and 17.2.2005 and the subsequent orders in W.P.No. 1130 of 2005, dated 25.2.2005, the fourth respondent Municipality is now taking emergent and indiscriminate steps to evict thousands of families who have constructed houses in poramboke lands which they have been occupying for generations. It is further stated that their names are found in voter's list, they have ration cards, they are enjoying water supply connection and their houses have been assessed to tax by Municipality. The specific prayer in the writ petition is to --

"..... issue a writ of mandamus or any other writ, order or direction in the nature of writ forbearing the 2nd, 3rd, and 4th respondents from demolishing or evicting or dispossessing any person from his or her dwelling house situated in Poramboke lands in Rajapalayam Taluk for which tax has been assessed by the 4th respondent Municipality....."

3. W.P. No. 2100 of 2005 is filed by the Secretary, Kodaikanal Permanent Residents Welfare Association, which is a Society, registered under the society Registration Act. It is claimed that, such writ petition has been filed in public interest against the action of respondent Nos. 1 to 3 who made announcement by way of public address system in 16.3.2005 to evict the permanent residents including persons from Tribal Communities who have been residing at Kodaikanal for generations and their houses are assessed to municipality taxes and the respondent No. 3 seeks to demolish the permanent dwelling houses of about ten thousand residents of Kodaikanal without giving any reasonable notice and without providing any alternative accommodation and hence this writ Petition.

3.1. In the affidavit it has been indicated that that KodaiKanal Township was founded in the year 1899. It is alleged that the permanent residents of Kodaikanal have settled down in different Government lands for long period and such houses have been assessed to municipal tax and the proposed eviction would render more than 25,000 people without any shelter or livelihood.

3.2. In the grounds in support of the petition, a reference has been made to Right to Life and Liberty under Article 21 of the Constitution of India and particular reference has been made to Right to Shelter as a Fundamental Right. It has been further indicated that inhabitants are apprehensive of forcible removal by respondents without following any due process of law. The specific prayer is to --

".....issue a Writ of Mandamus or any other Writ or direction in the nature of Writ

forbearing the Respondents No. 1 to 3 from evicting and demolishing the houses of the permanent residents of Kodaikanal whose houses are assessed to property and houses taxes by Respondents No. 1 to 3 except by due process of Law....."

4. In W.P. No. 1964 of 2005, a counter has been filed on behalf of the 4th respondent, namely, the Commissioner, Rajapalayam Municipality and subsequently an additional counter affidavit also has been filed. In such counter affidavits, apart from challenging the very right of the petitioner to file the writ petition by questioning his locus standi, in paragraphs 4 and 5, it has been stated as follows;

"4. ... As per order of the Honourable Madurai Bench of Madras High Courts, the encroachment made on the lands vested with the Municipality, Municipality roads and streets which are hindrance to the public are sorted out and list has been taken and no action has been taken by the Municipality to evict the encroachments on Government Poramboke lands so far.

5. It is further submitted that all the encroachments found in the encroachment list prepared by the respondent municipality are recent one. The encroachers have no right to continue their possession and enjoyment. All the encroachments have to be removed in the interest of the public. Under the Tamil Nadu District Municipalities Act power to remove encroachments is confined to streets and roads vested in the Municipality."

4.1. The other allegations in the writ petition have been denied. It has been further indicated that mere levy of property tax on building does not confer any legal title on the person to the property. The allegation relating to announcement in Newspaper relating to the eviction drive has been, as expected, denied. In paragraph 8 of the counter, wherein it has been also stated that as per the direction of the Division Bench of this Courts, the respondent Municipality has taken action to measure and find out the encroachment in the properties belong to the respondent Municipality and in street and roads vested in the Municipality and the news was given to the Press as a precaution action to the encroachers and the above said news was published in all the News Papers. In paragraph 10, it has been further indicated as under:

"10. The Respondent herein was advised to submit that it is settled law by various decisions given by this Honourable High Courts as well as Apex Courts. All the encroachments should be removed and in respect of recent encroachments issuance of notice is not necessary, in respect of other cases, after issuing the notice to the occupier, the encroachment should be removed. The matter on the hand the respondent municipality has decided to remove the encroachment as per direction of this Honourable Courts with following the Tamil Nadu District Municipalities Act, 1920. But the petitioner herein by suppressing all the facts and misleading the Courts obtained interim injunction that not to do the statutory action of the respondent municipality."

5. In the counter affidavit in W.P.No. 2100 of 2005, relating to Kodaikanal, the

Commissioner of Kodaikanal Municipality, who entered appearance through very same learned counsel, has denied the allegations in a general manner and very same stand as in W.P.No. 1964 of 2005 has been reiterated. It has been stated :

"5. I further submit that all the encroachments found in the municipality roads, and streets are recent one, since the respondent municipality removed all the encroachments in the public road and streets during the month of June 2003. At that time only the road and street margin encroachments were removed but no dwelling houses were evicted. Therefore no notice has been required to the removal of encroachments made on the second respondent municipality roads and streets as per earlier decisions of the Hon"ble Courts as well as Apex Courts.

6. In view of direction passed by this Hon"ble Division Bench of this Courts dated 17.2.2005 and guidelines issued by the state Government in its proceedings G.O. (D)No. 447 of Municipal Administration and Water Supply Department dated 3.8.2000, the first respondent District Collector, Dindigul has directed this respondent Municipality by his letter dated 12.3.2005 that to measure all the encroachments in the municipal, limit and to inform the same to the concerned department and also directed that the second respondent municipality has to take necessary action to remove the encroachments on the lands vested with the municipality and municipality roads and streets without any delay. Therefore the second respondent municipality has taken necessary action to find out the encroachments made on the municipal lands as well as Government poramboke lands."

6. A perusal of both the writ petitions as well as the counter affidavits thus makes it clear that, steps are being taken by the Municipal Authorities to remove the encroachments pursuant, to the observation made by the Division Bench of this Courts in W.P.No. 689 of 2005. It would be appropriate to notice that apprehending forcible removal and demolition on the basis of the directions issued in the said writ petition, several writ, petitions have been filed, which are pending either before the Single Judge or before the Division Bench. As a matter of fact, the order of Reference to the Full Bench itself is on the anvil that the questions raised are lively to affect number of persons. Before proceeding further, it is therefore appropriate to refer to W.P.No. 689 of 2005, which, like the "face that launched a thousand ships" appears to have launched hundreds of demolitions and scores of litigations. The writ petition was filed by the Madurai Maanagar Old Motor Spare Parts Dealers Association for quashing the Auction Notification issued by the Madurai City Municipal Corporation for granting lease or licence of the open space sites, shops of Krishnarayar Teppakulam East and South Streets of Madurai Town.

7. The Division Bench highlighted the aspect relating to proper use of public streets and ultimately observed in paragraph 9 as under:

"9. For all the above reasons, while quashing the impugned Tender Notification, dated 19.1.2005, inviting tenders for grant of license for the open space in the

Krishanarayar Teppakkulam East and South Streets of Madurai Town and forbearing the respondent-Madurai Corporation from in any way leasing out or giving any license of the open space area of the said two Streets and directing the members of Petitioner-Association themselves to remove their encroachments in front of their respective shops, we also direct the respondent-Madurai Corporation to take all effective steps to remove all encroachments in all the public roads and streets within the jurisdiction of this Temple City, if necessary with the aid of the police, but following the due process of law. Unless and otherwise such occupants are protected by valid license/lease granted by the respondent/Corporation, the respondent shall comply the above directions without any undue delay."

8. Thereafter, the matter was listed under the heading "for being mentioned" and the Division Bench while recording appreciation for the work done by the Corporation and frowning upon any objection observed in paragraphs 8 and 9 as follows:

"8. Having convinced so, we also deem it fit to set the wheel of law on motion in all other Local Bodies, Corporations and Districts that rope within the jurisdiction of the Madurai Bench of the Madras High Courts to give effect to the directions of this Courts dated 2.2.2005 to remove the encroachments within their respective limits, as indicated in the operative portion of the order dated 2.2.2005."

9. It appears, thereafter a fresh writ petition was filed by some other Association seeking for a writ of mandamus to issue fresh tender notification and also a Review Application No. 3 of 2005 was also filed on behalf of the latter writ petitioner. The Division Bench again emphasized the need for keeping the roads and street margins free of any encroachment and ultimately dismissed the Review Application as well as an independent writ petition No. 1130 of 2005 which had been filed by the very same petitioner.

10. There is no dispute at the Bar that on the basis of the observation made by the Division Bench in the matters referred to above, steps are being taken by various Municipal authorities and many writ petitions have been filed apprehending that there may be forcible demolition without following any due procedure of law. It is apparent that the Division Bench was only concerned with the question relating to encroachment on the roads or streets or road margins and the Division Bench has dwelt upon the obligation on the part of various authorities more particularly the municipal authorities to remove the encroachments. It is also only fair on our part to emphasise that the Division Bench has nowhere observed that the municipal authorities or other authorities should demolish the structures or remove all encroachments without following any procedure contemplated under law. On the other hand, at several places, the Division Bench has made it clear that the removal of encroachments should take place only by following the procedure contemplated under law. However, since the Division Bench did not spell out what specific provisions of law to be followed, misgivings have arisen in the minds of the various litigants creating

apprehension that they would be rendered homeless by removing all encroachments without following any due process of law. Such misgivings appear to have been compounded by some hasty action on the part of some municipal authorities by effecting removal of encroachments without the modicum of any reasonable notice by simply making public announcement or by making declaration by beat of drums or by general notice in newspapers. As a matter of fact, even though the Division Bench had observed that, those having licence to carry on any business need not be removed, certain licences, particularly under Dindigul Municipality, have been cancelled merely by referring to the order of the Division Bench.

11. It is thus apparent that from a stage of complete indifference and inaction in the matter relating to prevention and removal of encroachments some of the Municipalities have apparently swung to the other extreme extent of demolition overnight without any reasonable notice. It may be that the authorities concerned were apprehensive of initiation of proceedings under the Contempt of Courts Act and, as a knee jerk reaction, took steps for overnight demolition at times causing untold misery to many of the citizens without following any specified procedure.

12. In the aforesaid background, it is now necessary to analyse various relevant provisions so that future action would be in consonance with the tenets of Constitution as well as various statutory provisions.

13. The first and foremost question is relating to removal of encroachments from the roads and public streets. Section 61(1) of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred as the "Municipalities Act") provides that all public, streets in any municipality with the pavements shall vest in the municipal council. Section 61(2), however, empowers the State Government to withdraw any such street by notification. u/s 61-A, where any public street has been withdrawn u/s 61(2) and placed under the control of the Highways Department of the State Government, it is the duty of the municipal council to provide for the lighting, watering, scavenging and drainage of such street and for the provision of Maintenance and repair of foot pathway attached to such street. Section 3(21) of the Act defines public street as follows:

" "Public street" means any street, road, square, Courts, alley passage or riding-path over which the public have a right of way whether a thorough-fare or not, and includes --

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and land whether covered or not by any pavement, verandah, or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property whether that property is private property or property belonging to the

Government."

14. Chapter IX of the Municipalities Act contains specific provisions relating to public streets as well as private streets. Section 162 enjoins upon the municipal council to maintain the public streets and bridges. Section 180, which prohibits against obstruction in or over Streets, is quoted hereunder:

"180. Prohibition against obstruction in or over streets.-- No one shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street except as hereinafter provided."

14.1. Section 180-A provides that all streets vested in or to be vested in or maintained by municipal council shall be open to persons of whatever caste or creed. Section 181 is to the following effect.

"181. Prohibition and regulation of doors, ground-floor windows and bars opening outwards.-- (1) No door, gate bar or ground-floor window shall without a licence from the executive authority be hung or placed so as to open outwards upon any street.

(2) The executive authority may by notice require the owner of such door, gate, bar or window to alter it so that no part thereof when open shall project over the street."

14.2. Section 182(1) empowers the Executive Authority to remove encroachments; whereas Section 182(2) envisages payment of compensation under certain circumstances. The Section being relevant is quoted here under:

"182. Removal of encroachments.-- (1) The executive authority may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the municipal council shall make reasonable compensation, to every persons who suffers damage by the removal or alteration of the same."

14.3 Section 183 empowers municipal council to allow certain projections and erections and is quoted here under.

"183. Power to allow certain projections and erections.-- (1) The council may grant a licence, subject to such conditions and restrictions as it may think fit, to the owner or occupier of any premises to put up verandas, balconies, sunshades, weather-frames and the like, to project over a street, or in street in which the construction of accedes has been sanctioned by the council, to put up an arcade; or to construct any step or drain-covering necessary for access to the premises.

(2) The executive authority may grant a licence, subject to such conditions and restrictions as he may think fit, for the temporary erection of pandals and other structures in a public street vested in the council or in any other public place the control of which is vested in the council.

(3) The council shall have power to lease road sides and street margins vested in it for occupation, on such terms and conditions and for such period as the council may fix.

(4) But neither a licence under Sub-section (1) nor a lease under Sub-section (3) shall be granted if the projection, construction or occupation is likely to be injurious to health or cause, public inconvenience or otherwise materially interfere with the use of the road as such.

(5) The State Government may, by notification, restrict and place under such control as they may think fit the exercise by municipal councils in general or by any municipal council in particular, of the powers under Sub-sections (1) and (3).

(6) On the expiry of any period for which a licence has been granted under this Section, the executive authority may, without notice, cause any projection or construction put up under Sub-section (1) or (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in Section 344 from the person to whom the licence was granted."

15. An analysis of the aforesaid provisions contained in the Act makes it clear that the primary duty of the Municipality is to maintain the road and road margins free from encroachments. However, the council in its discretion is empowered to grant licence to owner or occupier of premises to put up verandas balconies, sunshades and weather-frames to project over a street or to grant licence for temporary erection of pandals or other structures in public street or even to lease roadsides and street margins for occupation. However, Section 183(4) makes it clear that no such permission or lease or licence would be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise likely interfere with the users of the road as such. Section 183(6) empowers Executive Authority to remove any projection or constructions at the cost of the concerned licensee after expiry of the period of licence even without notice to such licensee.

16. It is thus obvious that no person can claim absolute right, or unfettered right of erecting any structure on the road or on the roadside and the street margins without appropriate permission from the municipal council. It is also obvious that if any such unauthorised construction is made, the council is empowered to remove encroachments. However, where licence is granted u/s 183(1) and 183(2), the projection or construction can be removed by the Executive Authority even without issuing notice after the expiry of the period for which had been granted. Where, however, the question of removal does not come u/s 183(6), the removal of encroachment can be affected in accordance with Section 182 which envisages issuance of notice.

17. u/s 182(2), if the removal is effected in respect of any projection, encroachment before the expiry of the permission or the licence or where such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person prescriptive title thereto, the municipal council is required to make reasonable notice to every person who suffers damage by the removal or alteration of the same. It is obvious that if no compensation is offered in respect of action coming within the purview of Section 182(2) or if the compensation offered is not reasonable, the aggrieved party would be entitled to seek for payment of reasonable compensation before the appropriate Civil Courts. However, such person cannot seek for any injunction regarding the removal of the projection, encroachment or obstruction on the footing that compensation has not been paid or compensation paid is not reasonable. At the stage of Section 182, he is only entitled to a notice as envisaged u/s 182(1) so that he himself can remove the projection, encroachment or obstruction. If however he does not do so in spite of notice, it is the duty of the municipality to do so.

18. A related question which arises for consideration is relating to the tenor of the notice or the nature of the notice. It is apparent that in the recent spate of removal of encroachment, the so-called notice appears to be announcement through public address system or through beat of drums or by general notice in newspapers. To say the least, the above method adopted by different municipalities cannot be said to be in consonance with the requirement of law. As observed by the Supreme Courts in the decision *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, AIR 1997 SC 152, a person would be entitled to reasonable notice. The said case related to removal of some pavement dwellers who had constructed huts on the pavement within Ahmedabad Municipal Council. In the said case, notice of 21 days had been issued which was found to be reasonable. However, in paragraph 9 of the judgment, the Supreme Courts has observed that a notice of two weeks or 10 days may be held as sufficient.

19. We are inclined to hold that notice would ordinarily envisage a notice in writing to be served on the person concerned and giving of two weeks notice can be construed as reasonable. Even though the Municipalities Act does not contain any specific procedure relating to the nature and service of notice, the provision contained in Madurai City Corporation Act regarding notice in writing can be adopted. Notice by any other means, such as through public announcement or by beating of drums may prove to be illusory and therefore should be avoided. If the person avoids to receive notice, affixure of the written notice on the offending structure in question can be adopted.

20. As already noticed, the eviction drive is directly fall out of the observation of the Division Bench in W.P.No. 689 of 2005. It is required to be clarified that the said decision has merely reminded the municipal authorities of their duty to remove encroachments from the roads. There cannot be any two opinions regarding the fact that roads are meant for use by public for movement.

Unhindered movement of pedestrians as well as free flow of vehicular traffic is the prime object in maintaining a road. However, that does not mean that the municipal authorities have no discretion to permit erection of temporary structure or leasing out of the roadside or street margins. As already noticed, Section 183(1), (2) and (3) specifically enable the Council or the Executive Authority to do so, of course, subject to the paramount consideration as reflected in Section 183(4) No general and inexorable principle can be laid down by a Courts of Law prohibiting the municipal authorities from exercising their statutory power. All that can be said that the municipal authorities are required to act in a reasonable manner while exercising their authorities u/s 183. As observed by the Supreme Courts in the decision in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan, AIR 1997 SC 152, even the Municipal Authorities in their discretion can permit holding of temporary shops or markets for a limited period or on certain, days in certain roads or places. It is neither desirable nor appropriate for a Courts of law to lay down any general principle in such matters. The jurisdiction of the Courts is confined to consideration of the question, if raised in a given case, whether such power has been exercised arbitrarily or for collateral purpose. The Courts is not expected to arrogate to itself the discretionary power of the concerned authorities, nor the Courts can be expected to remain as a silent spectator if it is found that the concerned authorities have abdicated their function. However, as already pointed out, no general rule can be laid down in such matters.

21. Some contentions have been raised regarding the jurisdiction of municipal authorities to remove encroachment in respect of National Highway or State Highway passing through the municipal limits.

22. As per Section 2 of the National Highways Act, 1956, highways specified in the Schedule are declared to be the national highways. u/s 2(2), the Central Government may, by notification declare any other highway as National Highway. u/s 4 National Highways shall vest in the Union. u/s 5 it is the responsibility of the Central Government to develop and maintain the national highways, but the Central Government may direct that any function in relation to the development or maintenance of any national highway shall also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

23. The Control of National Highways (Land and Traffic) Act, 2002 is an Act to provide for control of land within the National Highways, right of way and traffic moving on the National Highways and also for removal of unauthorised occupation thereon.

24. u/s 3 the Central Government is empowered to establish a body or authority to be known as Highway Administration to exercise powers and discharge functions conferred on it under the Act and u/s 3(1)(b) the Central Government is empowered to define the limits of the Highway within which, or the length of

Highway on which, a Highway Administration shall have jurisdiction.

Chapter III relates to prevention of unauthorised occupation of highway land and their removal. Detailed power and procedure have been prescribed and there being specific provisions contained in the Control of National Highways (Land and Traffic) Act, 2002, to the extent such Act is applicable, the power is obviously vested with the Highway Administration or the officer authorised by such Administration and, obviously to that extent, it is the Highway Administration or the officer authorised empowered to take steps as and when part of any Highway passing through Municipalities comes within the scope of the Control of National Highways (Land and Traffic) Act, 2002.

25. So far as other roads within the State other than the National Highways, are concerned, the Tamil Nadu Highways Act, 2001 has been enacted, which is an Act to provide for the declaration of certain highways to be State highways, restriction of ribbon development along such highways, prevention and removal of encroachment thereon, construction, maintenance and development of highways, and levy of betterment charges and for matters connected therewith or incidental thereto. Chapter V of the Act relates to prevention of unauthorised occupation of, and encroachment on a highway and removal of encroachment.

26. Therefore, to the extent the Tamil Nadu Highways Act, 2001 is applicable, to any road, power to remove encroachment, etc., is with the Highways Authority.

27. Next comes the question relating to removal of encroachments on lands which do not form part of the road or roadside land or street margins. So far as the Municipalities are concerned, apart from the streets and roads which vest in the municipality, there may be certain other lands which are not part of the road or street, but which vest in the municipality. In respect of such land encroached upon by an encroacher, it is obvious that the municipality is required to follow the provisions contained in Public Premises Eviction Act or other appropriate law to recover possession from the person in possession in accordance with law. However, the municipality is not expected to take the law into its own hand and forcibly evict the trespasser by misconstruing the observation made in the order of the Division Bench. Rule of law is required to be followed. The definition clause u/s 2(e)(ii) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 takes within its sweep any land or building belonging to the Municipality. It is therefore obvious that recourse can be had to the provisions contained in the aforesaid Act. Where, however, there is bona fide and serious dispute to the entitlement, of the municipality, the summary procedure contemplated under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 may not be applicable and the municipality would be required to recover possession through a Civil Courts.

28. Apropos lands which vest with the Government, even if such lands are within the municipal areas, it is obvious that municipal authorities have no jurisdiction to take steps for eviction either under the Public Premises Eviction Act or even

under the Land Encroachment Act. It may be that the municipal authorities also being public functionaries can bring the factum of such encroachment to the notice of the appropriate authorities.

29. In course of hearing, both the counsel appearing for the petitioners have submitted that the right to shelter is a part of fundamental right of a person under Article 21 of the Constitution of India and therefore such right should not be abridged or taken away. The counsel appearing for the residents in Rajapalayam has submitted that without making any alternative arrangement for the rehabilitation of the persons concerned, such persons should not be evicted. It is also alleged in the writ petition filed by the residents that the authorities only seek to evict the poor and the deprived, but no action is ever taken against the rich and the influential encroachers who have encroached upon Government lands and constructed palatial structures. In the absence of detailed particulars, more particularly in the absence of such persons, who have allegedly encroached upon Government lands, it is difficult for us to come to any particular conclusion. However, the allegation, if true even in the slightest manner, is serious enough which should be taken note of by the concerned authorities. There cannot be any dispute that all persons should be treated equally and if at all there is any need of protection, such protection is expected to be extended to the weaker Section of the society, the have-nots, the deprived, rather than the rich and the influential. We have no doubt in mind that the authorities are alive to the aforesaid position.

30. In course of hearing, it was submitted at the Bar that various authorities were threatening to take action inspite of the decree or interim order protecting the right of a person. The decision of the Division Bench in W.P.No. 689 of 2005 has nowhere indicated that the authorities are required to take action notwithstanding any decree or interim order of the Civil Courts to the contrary. It is made clear that if there is any decree or interim order holding the field, unless and until such a decree or interim order is set aside or vacated in a manner known to law, no action for eviction can be taken in the pretext of enforcing the order of the Division Bench in W.P.No. 689 of 2005.

31. In course of hearing, learned counsel for the petitioners had emphasised that many of the occupants were assessed to property tax by the Municipalities and had been given water connection and electricity supply. If the occupation of a person is unauthorised, merely because such a person is asked to pay property tax or is given water connection or electricity supply, such unauthorised occupation does not become authorised. Payment of property tax or provisions for water connection or electricity can at best be construed as evidence of possession of a person, but such payment of property tax or provision of water connection or electricity does not legalise the occupation, if such occupation is otherwise unauthorised.

32. So far as the claim of the petitioners not to be evicted unless provision is made for their rehabilitation or alternative accommodation, it is obvious that no

such specific direction can be given. Rehabilitation cannot be made a condition precedent. As a matter of fact, such a plea was not accepted by the Supreme Courts in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, . However, since it has been observed that procedure contemplated under law is to be followed, it would be always open to the individual so aggrieved to put-forward his grievance before the appropriate authority. If a person has acquired prescriptive right over a land, other then road or road margins or road side land, it would be always open to such person to resist the eviction by establishing his right. Even in case where person has not acquired any prescriptive right, the matter has to be considered by the appropriate authority. No specific or general direction can be given by the Courts laying down that a person, liable to be evicted has a right to be rehabilitated. However, we must hasten to add, that as observed by the Supreme Courts, it is always open to the appropriate authority to prepare any particular scheme for rehabilitation depending upon the facts and figures in a particular case and of course depending upon the financial resources of the concerned authority.

33. The learned counsel for the municipalities had placed reliance upon a decision of the Single Judge Arunachalam and 7 Ors. v. The Avadi Municipality, 1998 W.L.R. 726, as well as a decision of the Division Bench Sekhar 5 Ors. v. D. Malligarjuna Rao and Ors., 2001 W.L.R. 140. So far as the decision of the learned Single Judge is concerned, it is apparent that proceedings had been taken under the Land Encroachment Act and therefore keeping in view such background, the ultimate order was justified. However certain observations made by the learned Single Judge appear to be very wide in their extent. Particularly in paragraphs 11 and 16 it had been laid down that occupiers of Government Poromboke land, even if they have remained in possession for considerable length of time, cannot seek for a writ of mandamus for protecting their possession.

34. Similar observation made by the Division Bench in Sekhar 5 Ors. v. D. Malligarjuna Rao and Ors., 2001 W.L.R. 140, particularly in paragraph 9 and 10 appear to be too widely stated.

35. Law is well settled that a person in possession has the right to protect his possession against the entire world, except the true owner and even so far as the true owner is concerned, such person in possession has a right, to be protected against any forcible dispossession by the true owner. Section 6 of the Specific Relief Act clearly protects the possession of a person and if a person is forcibly dispossessed, such person can recover his possession on the basis of his earlier possession if he files a suit within 6 months from the date of forcible dispossession. It is of course true that Section 6 of the Specific Relief Act is not applicable against the Government. That however does not mean that the State is authorised to forcibly evict a trespasser from the Government land. Precisely, for the aforesaid purpose, specific provision has been made in the Land Encroachment Act and the Government is expected to follow the law which it has created. In such a case, mandamus could be issued to the effect that the person

should not be forcibly evicted without following the procedure contemplated in law. As a matter of fact, observations made in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, clearly lay down that a person can always approach the Courts for protecting his right.

36. Mandamus can be issued not only to enforce a statutory right, it can also be issued to enforce a public duty. It is the duty of the public functionaries to follow specific provisions of law for a particular purpose and they are not supposed to take law into their own hands. If, therefore, there is a reasonable apprehension of breach of such duty, the doors of the Courts shall remain open for the citizen.

37. The counsel for the respondent municipalities had placed reliance upon the decision of a Division Bench of this Courts Arignar Anna Bus Stand etc., Association v. The Commissioner, Madurai Corporation 1987 W.L.R. 136 to contend that encroachment of the road can be only from an adjacent private owner and any independent structure on the road or road margin cannot be considered as coming within the scope of Section 182 for the purpose of issuing any notice. The aforesaid Division Bench decision related to the alleged right of persons who were utilizing the premises of Anna Bus Stand, Madurai, for doing their business in small mobile shops and, therefore, in the aforesaid context, the Courts had observed that under the provisions contained in Section 471 of the Madurai City Municipal Corporation Act, which is similar to Section 182 of the Municipalities Act, no notice was required. We do not think that the aforesaid decision can be construed to mean that an independent structure constructed on the road side, road margin or even on the road, is not a structure or encroachment in the road as envisaged u/s 182 of the Municipalities Act. It is therefore obvious that for removal of such structure or encroachment, the requirement u/s 182 is to be followed.

38. It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P.No. 689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner :

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6) Before taking action u/s 182 of the District Municipalities Act, notice in writing giving atleast two weeks time should be served and, if the person avoids to receive the notice, such

notice can be effected by affixure. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

(2) The decision in W.P.No. 689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has power to lease road sides and street margins for occupation on such terms and conditions and for such period as the Council may fix. However, such power under Sections 183(1) and 183(3) should be exercised keeping in view the provisions contained in Section 183(4) and no such licence u/s 183(1) or lease u/s 183(3) should be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Any projection or construction put up u/s 183(1) or (2) can be removed on expiry of the licence or the lease, as the case may be. Compensation is required to be paid in matters coming within the scope of 182(2).

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporations or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporations or Panchayats.

(5) To the extent the National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the Tamil Nadu Highways Act, 2001, are applicable to the Roads coming under the State Act.

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

(8) The directions issued in W.P.No. 689 of 2005 are applicable to removal of encroachments on roads and road margins and not other lands belonging to the

Local Authorities or the State. The said decision should not be construed as giving a licence to the Local Authorities to cancel the existing license or lease or to remove the encroachments without following the procedure contemplated under the law.

(9) If any Civil Courts decree or interim order is holding the field, obviously, no action can be taken, unless and until such a decree or interim order is set aside or vacated in a manner known to law.

39. Subject to the aforesaid observations, both the writ petitions are disposed of. There would be no order as to costs. Consequently, the connected miscellaneous petitions are closed.