

(2005) 12 MAD CK 0091

In the Madras High Court

Case No : Writ Petition No. 24903 of 2004, W.P.M.P. No. 30266 of 2004 and
W.V.M.P. No. 959 of 2005

S. Veerasamy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Land Encroachment Act, 1905 — Section 6, 7

Citation : (2006) 1 LW 358 : (2006) 1 MLJ 391

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : Venkatachalapathy, for M. Sriram, for the Appellant; S. Venkatesh,
Spl.G.P., for the Respondent

Judgement

P.D. Dinakaran, J.—By consent, the writ petition itself is taken up for final disposal.

2. Heard both sides.

3. The petitioner has filed this writ petition seeking for the issuance of a Writ of Certiorarified Mandamus to call for the entire records of the 3rd respondent in his letter dated 29.7.2004, quash the same and consequently direct the respondents to grant patta to the petitioner for the lands in S. Nos. 674/B, 720, 721/2, 735, 736, 737 and 738 to the total extent of 3.23 acres situated at Vengatavaram Village, Sevelimedu Mathura, Kancheepuram District.

4. In the affidavit filed in support of the writ petition, it is stated that the petitioner is an agriculturist by profession and that he is in possession of 3.23 acres in S. Nos. 674/B, 720, 721/2, 735, 736, 737 and 738. In the year 1978, the petitioner sought for assignment of the lands under his cultivation from the second respondent. In regard thereto, the petitioner was asked to contact the office of the 3rd respondent and though several representations were made by him, he was not favoured with any order of assignment. According to the

petitioner, right from the year 1968, he has been paying B.Memo charges as demanded by the authorities. In the year 1986, the petitioner was served with a letter from the office of the 3rd respondent informing him about the enquiry to be conducted by the Revenue Divisional Officer, Kancheepuram at 10a.m. on 20.12.1986 and the petitioner was directed to be present at the time of enquiry. According to the petitioner, the respondents conducted enquiries regarding the feasibility of assigning the lands in question to the petitioner.

5. The petitioner has further stated that the respondents were hesitant to grant assignment in his favour as some portions of the lands in question were abutting the Sevelimedu lake. Though the report called for from the Executive Engineer, Public Works Department, Kancheepuram Division in the year 1984 also stated that there was no impediment for assignment of the lands, so far, the petitioner had not been granted any order of assignment. According to the petitioner, he is entitled to assignment since, right from the year 1968, he is in occupation of the lands. The petitioner, once again, pursued his claim for assignment in the year 1993 and after conducting an enquiry, the 3rd respondent submitted a report that the claim of the petitioner can be considered favourably. It is further stated that the Government assigned an extent of 3 acres in S. No. 729/2 and lands measuring 39 cents in S. No. 721/3. While so, the petitioner was served with the notice dated 29.7.2004 stating that the petitioner should remove all the encroachments within a period of 15 days. Hence, the present writ petition.

6. The main contention raised by the learned senior counsel appearing for the petitioner is that the third respondent has issued the impugned notice u/s 6 of Land Encroachments Act, 1905, (hereinafter be referred to as "the Act" for short), without issuing a notice u/s 7 of the Act, which is a condition precedent for issuing notice u/s 6 of the Act, thereby committed violation of the procedure contemplated under the Act.

7. Concededly, the issue is directly covered by the decision of this Court reported in Gooda Srinivasalu Naidu Vs. The Collector and Others, , wherein it is held in paras 9, 10 and 11 as follows:-

"9. It is well settled law that when a power is vested with an authority under the statute, that power must be exercised strictly in accordance with the procedure prescribed. Therefor, any departure therefrom cannot be easily tolerated. In the instant case, the very statute prescribes the manner in which power should be exercised by the authorities and there is no provision in the statute to dispense with such a procedure at all. The statutory prescriptions must have their due significance by observance and they cannot be allowed to be breached and amelioration therefore cannot be thought about by saying that the persons affected could participate in the enquiry. Merely because such notices u/s 7 of the Act had been periodically served on the petitioner on the earlier occasion itself does not give a cause of action for the present impugned eviction proceedings dated 18.10.1986 of the second respondent.

10. It is needless to mention that time and again there are judicial pronouncements of this Court as well as other High Courts on the point that unambiguous language of the statute contemplating certain statutory requirements prescribed in the statute itself cannot be reduced to an empty formality. Of course, a decision of the division bench of this court reported in Hamsavalli and etc. Vs. The Tahsildar, Vridhachalam, South Arcot District, and other decision of this Court namely reported in P. Rameswamy v. The Assistant Engineer, Highways and Rural Works Department, Nagapattinam 1977 (I) MLJ 162: AIR 1978 NOC 223 and a decision reported in Abbayya v. State of Andhra Pradesh AIR 1960 AP 135 are to the same effect that summary eviction proceedings proposed u/s 6 is held to be invalid for non-issue of a prior notice contemplated u/s 7 of the Act.

11. For the above reasons, the writ petition is allowed. No costs. However, I make it clear that this shall not debar the respondents from initiating proceedings strictly in accordance with the provisions of the Act if so required and equally it is open to the petitioner to counteract the same as per the rights and stand available to him in law".

8. Hence, following the said decision, the impugned notice, dated 29.7.2004 is set aside, of course giving liberty to the respondents to initiate fresh proceedings strictly in accordance with law, if they are so advised.

9. The writ petition is disposed of accordingly. Consequently, the connected miscellaneous petitions are closed. No costs.