
(2006) 08 MAD CK 0017

In the Madras High Court

Case No : Writ Petitions No"s. 39323, 39324, 39377 to 39379, 39530 to 39533, 39578 to 39581 and 39629 to 39632 of 2005 W.P.M.P. No"s. 42188 TO 42190, 42133, 42134, 42372 to 42375, 42426 TO 42429 and 42472 TO 42475 of 2005 and W.V.M.P. No"s. 536 to 549 and 1083 t

U. Angamuthu

APPELLANT

Vs

The Commissioner, Trichengode Municipality, The District Collector and The Tahsildar

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 182, 182(2), 183, 183(6), 313

Citation : (2006) 4 MLJ 517

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : V. Bharathidasan, for the Appellant; V. Subbarayan, for R. 1, V. Arun, Government Advocate for R.2 and R.3 and K.M. Vijayan, S.C. for N. Manokaran in for R.4 in Wps. 39377 to 39379, 39530 to 39533, 39578 to 39580 and 39629 to 39632/2006, for the Respondent

Final Decision : Dismissed

Judgement

M. Thanikachalam, J.—With the consent of either counsel, the main writ petitions themselves are taken up for final disposal.

2. All the petitioners herein are occupying different extents of land, by raising pucca buildings in S.Nos.12/1 and 12/2, Ward-B, Block-12 in

Kombainagar to Sengondanpalayam Road, Kailasampalayam Village, Trichengode Municipality.

3. One A.A. Loganathan, the impleaded fourth respondent in some of the writ petitions, who is a resident of Weavers Colony, Tiruchengode, had

filed W.P.No. 32224 of 2005 before this Court, as against the District Collector, Namakkal and the Commissioner of Tiruchengode Municipality,

praying for a Writ of Mandamus directing the respondents therein, to take emergent steps to remove the entire encroachments on the

Kombainagar to Sengodampalayam Road in T.S.Nos.12/1, 12/2 and 12/3 of Tiruchengode Municipal limits, by considering his representation

dated 23.9.2005 in accordance with the provisions of the Tamil Nadu District Municipalities Act, 1920 or any other law for the time being in

force, wherein this Court, by the order dated 5.10.2005, has directed the respondents therein to consider the representation of the petitioner and

pass appropriate orders on merits and in accordance with law.

4. It seems, pursuant to the said direction of this Court and considering the representation of the said A.A. Loganathan, the first respondent/the

Commissioner of the Tiruchengode Municipality, has issued impugned notices to all the petitioners under Sections 182, 183, 313, 339 and 340 of

the Tamil Nadu District Municipalities Act, directing the petitioners to remove the constructions within 15 days from the date of receipt of notice,

on the ground that the petitioners have encroached the land and put up constructions therein, which are under challenge in these writ petitions.

5. According to the petitioners, the said area is classified as "poramboke" in the revenue records and the Revenue Authorities also treated the land

as "unassessed land" under the Tamil Nadu Land Encroachment Act and they are in occupation of their respective lands for the last more than 30

years, by obtaining electricity and water connections and by paying necessary B-Memo. charges from 1977, apart from paying property tax to the

first respondent and the respondents 2 and 3 have recognised their occupation and receiving B-Memo. charges from them.

6. The petitioners would state that the above area is situated near to a small road reaching Sengodanpalayam village from the Salem Main Road,

which is only a village road, width of more than 40 feet, with a minimal vehicular traffic, no bus or heavy vehicle plying in the road; that the existing

road is more than enough to carry the traffic; that mainly the petitioners and other residents in that area are using the road and villagers of

Sengodanpalayam are using another main road to reach Trichengode and the occupation of the poramboke land by the petitioners is in no way

affect the vehicle or traffic nor causing any hindrances to any general public and that the lands in their occupation do not form part of the above

road or road margin, but is a separate land adjacent to the road, which belongs to the Government and at any rate, the above land in the

occupation of the petitioners cannot be considered as road or public street and the above land never vest with the first respondent herein.

7. The petitioners further submit that since they are residing in the above land for more than 30 years and put-up pucca constructions and made

improvements in the land, the above land is also does not fall under the prohibitory lands and hence the petitioners and other residents in the same

survey numbers, made representations to the Revenue Authorities to grant patta in their favour, which are still pending with the Revenue

Authorities. Along with the writ petitions, the petitioners also filed miscellaneous petitions and obtained orders of stay, which are sought to be

vacated by the first respondent/Municipality and the impleaded fourth defendant, by filing separate vacate stay petitions.

8. The first respondent/Commissioner, in their counters, would admit that the petitioners are residing in the respective lands by raising houses, by

obtaining electricity and water connections and by paying property tax. But, this respondent pleads ignorance, whether from the petitioners B-

Memo. charges have been collected or not and would say that house-tax receipts, E.B. Tariff cards would not confer any title on the encroachers,

because those documents have no presumptive value.

9. This respondent would further submit that the above area was classified as "sarkar poramboke road" in the revenue records and the Revenue

Authorities permitted the first respondent Municipality to lay a road for easy access for the weaver's colony, which came into existence in the year

1956; that S.Nos.12/1, 12/2 of Ward-B, Block 12 of Weaver's colony, Kailasamplayam village, within the jurisdiction of Tiruchengode

Municipality is admittedly a road from the year 1956 and hence the Municipality is having a power under the Tamil Nadu District Municipalities

Act to remove the encroachments on road side as per the Act and Rules; that once the land belonging to the Government is admittedly given for

road purpose to the Municipality, thereafter, the Government is not entitled to evict the encroachers under the Land Encroachment Act, since it is a

road maintained by the Municipality and hence the petitioners cannot say that the 1st respondent does not have power under the Act and the

respondents 2 and 3 alone are having the power to remove the encroachment of the petitioners under the Land Encroachment Act; that the above

area is situated near to a 14.7 mts. Width road reaching Sengodampalayam Road to Kombai Nagar and heavy vehicles and school buses are

plying in the road, further, it is an industrial and developing area and hence there is heavy vehicular traffic at present, which may increase in the forth

coming years; that the encroachment of the land by the petitioners is obstructing the free flow of traffic and due to the encroachment, the width of

the road is reduced to 23 feet and the same is causing high congestion due to heavy movement of the people; that admittedly, the petitioners only

encroached the road margin recently, so that the occupation of the land is not "revenue poramboke", but it is admittedly a "road side margin",

wherein the first respondent is having power under the Act to evict the petitioners; that many of the petitioners and others have filed W.P. No.

38175 of 2005 praying to issue a writ of Mandamus directing the respondents to consider their representation dated 28.9.2005 for grant of patta

to them, wherein this Court, by its order dated 25.11.2005, while dismissing the writ petition, directed the respondents 1 to 3 therein to consider

the representation of the petitioners dated 28.9.2005 and pass appropriate orders, in accordance with law.

10. On the same lines, the impleaded fourth respondent also filed a counter, thereby submitting that because the petitioners have occupied the road

on either side to an extent of 25 feet, the width of the 48 feet road connecting the Kombai Nagar and Sengodampalayam, has been reduced to 23

feet and thus causing high congestion; that after entering into the public road, the trespassers are claiming equity in their favour, though they have no

legal right; that the writ petitions are liable to be dismissed that the encroachers have no legal right and the writ petitions are not maintainable in law;

that the respondents 1 to 3 are bound to take action against the encroachers in the public road, otherwise, in future, the encroachers may come

forward with a right to seek for the regularization of their occupation in the public road; that the respondents 1 to 3 are duty bound to invoke the

provisions of the Land Encroachment Act, 1905, the District Municipalities Act, 1920 and the Tamil Nadu Public Premises (Eviction of

Unauthorised Occupants) Act, 1975 to remove the encroachments and that the authorities are empowered to issue warrant of arrest and impose

custody for a period not exceeding 30 days so as to prevent the obstructors continuing to obstruct.

11. Heard Mr. V. Bharathidasan, learned Counsel for the petitioners, Mr. V. Subbarayan, the learned Counsel for the first

respondent/Municipality, Mr. V. Arun, learned Government Advocate for the respondents 2 and 3 and Mr. K.M. Vijayan, learned Senior counsel

for the impleaded fourth respondent.

12. The writ petitioners in all the cases are occupying a portion of the property comprised either in Town Survey Nos.12/1 or 12/2 (or 12/3),

which are equivalent to old Survey Nos.67/2 and 68/4 (84/1-part) situated adjacent to Kombainagar to Sengondanpalayam Road,

Kailasampalayam Village, within the municipal limits of Tiruchengode,

13. Mr. A.A. Loganathan, the impleaded fourth respondent herein, moved this Court in W.P. No. 32224 of 2005, seeking a Writ of Mandamus,

directing the respondents 1 and 2 herein, who are the respondents therein, to take urgent steps to remove the encroachments on the Kombainagar

to Sengondanpalayam Road in T.S. Nos. 12/1, 12/2 and 12/3 of Tiruchengode Municipal limits, on the basis of his representation dated

23.9.2005. This Court, considering the averments therein, felt, an appropriate order is necessary, in order to keep the road free from hindrances

and in this view, a direction was issued, as per the order dated 5.10.2005, to consider the representation of the fourth respondent herein and pass

appropriate orders on merits within a period of 12 weeks. The Authorities, considering the representation of the 4th respondent, as per the

direction of this Court in W.P.No. 32224 of 2005, issued notices to all the writ petitioners under Sections 182, 183, 313, 339 and 340 of the

Tamil Nadu District Municipalities Act, directing the writ petitioners to vacate the premises, which they have trespassed and occupied, after the

removal of the superstructures within 15 days, further informing, failure to remove on their own, the Municipality will remove the encroachment

claiming the expenses also, which caused grievances to the writ petitioners and therefore, they have filed all the above writ petitions challenging the

said notices dated 11.11.2005, praying to quash the same, alleging that the Municipal Authorities have no right to order eviction or even to request

them to vacate the premises.

14. On an earlier occasion, many of the writ petitioners and others, contending that their occupation is not, in any way, affecting the vehicular traffic, approached this Court, in W.P.No. 38175 of 2005, seeking a Writ of Mandamus, directing the respondents to consider their representation, for grant of patta, and the same was dismissed by this Court on 25.11.2005. However, there is a direction also to consider the representation of the petitioners and pass appropriate orders in accordance with law. Prior to this, in W.P.No. 32224 of 2005, as adverted to above, a direction has been issued, to take appropriate action on the basis of the representation given by the 4th respondent. Therefore, despite the fact, there is a subsequent order, no prohibition is available to evict the encroachers and in this way alone, it seems to me, that the impugned notices have been issued on 11.11.2005.

15. The learned Counsel for the writ petitioners would submit that the properties under the occupation of the writ petitioners are classified as "Government poramboke" and therefore, the Commissioner of Tiruchengode Municipality has no jurisdiction to initiate proceedings under the Tamil Nadu District Municipalities Act, labelling the writ petitioners as encroachers and in this view, the impugned notices issued, drawing power under Sections 182, 183, 313, 339 and 340 of the Tamil Nadu District Municipalities Act, are liable to be quashed. No other point was urged before me.

16. The learned Counsel appearing for the respondents argued that the properties which are in the occupation of the writ petitioners are on ground a road or road margin, vested with the Municipality and because of that classification, at present, the Municipal authorities are competent to initiate proceedings, to order the eviction of the encroachers. In aid, reliance is placed upon the Full Bench judgment of this Court in Ramaraju Vs. The State of Tamil Nadu and Others, . Therefore, the main question or important question that arises for consideration in these cases is "whether the properties, which are in the occupation of the writ petitioners, are "Government poramboke" or "road" or "road margin", vested with the Municipality?

17. If it is shown that the road or a road margin, as the case may be, which are said to be in the occupation of the writ petitioners, are vested with

the Municipality, then, the jurisdiction of the first respondent/Municipality cannot be doubted. On the other hand, if it is made out, that the

properties which are in the occupation of the writ petitioners are classified as "Government poramboke", not vested with the Municipality, then,

certainly, as claimed by the writ petitioners, the Municipal Authorities will not have jurisdiction to order eviction or to remove the encroachers from

the property concerned. In that case, if at all, invoking the jurisdiction under the Land Encroachment Act, the Revenue Authorities alone may be

competent to take steps to evict the encroachers. In this context, we have to remember certain provisions of the Tamil Nadu Municipalities Act,

1920, as amended then and there.

18. Section 3 (21) of the Tamil Nadu District Municipalities Act defines "public street" as follows:

"public street" means any street, road, square, court, 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.

From the above definition, one thing is certain that the property is used as road or the properties which are in the occupation of the writ petitioners,

if lies on either side of the road, upto the boundaries of the adjacent property, then, that portion also should include within the meaning of the

"road" or "public street" thereby vesting right in the Municipality for its maintenance.

19. u/s 182 of the Act, the Executive Authority is empowered to issue notice to the occupier of any premises, to remove the encroachment over

any street, subject to Section 182(2), the occupier satisfying the authorities concerned, as stated therein.

20. The Full Bench of this Court, in the above cited judgment, considering the scope of Sections 181 and 182 of the Tamil Nadu District

Municipalities Act, 1920, as well as considering the definition for "public street", has given the guidelines, how an encroachment has to be removed

under the Tamil Nadu District Municipalities Act and the relevant portion reads as under:

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.

While laying down the above law, the duties and responsibilities of the Municipalities also considered elaborately, as seen from paragraphs 15 and

16 of the above said judgment, wherein it is stated that "the primary duty of the Municipality is to maintain the road and road margins free from

encroachments", making it further clear that "no person can claim absolute right or unfettered right of erecting any structure on the road or on the

road side and the street margin, without appropriate permission from the Municipal Councils".

21. It is not the case of the writ petitioners before me that the Authorities have granted permission for them to put up any superstructure in the road

margin or the road poramboke, as the case may be, though the property was assessed to tax, providing the facilities, such as electricity service

connection etc. The supply of electricity service connection or providing basic amenities to the encroachers, on humanitarian consideration,

certainly, would not vest any right upon them to squat upon the road or road margin, as the case may be, whatever may be the period of

occupation, forever detriment to users of the public street. Thus, having the above settled provisions of law, now we have to see, on facts, whether

the properties which are in the occupation of the writ petitioners are vested with the Municipality or it is a Government poramboke.

22. The writ petitioners, in their separate affidavits (all are similar) have stated that the properties, which are in their occupation, are classified as

"poramboke" in the revenue records and the revenue authorities also treated the land as "unassessed land", the land under Tamil Nadu Land

Encroachment Act. It is further averred in paragraph No. 5 of the affidavits of the writ petitioners, that the area is situated near to a small road

reaching Sengodampalayam village from the Salem main road, which is only a village road with a width of more than 40 ft., with a minimal vehicular

traffic, no bus or heavy vehicle is plying on the road. Further, at the end of paragraph 5 it is stated that the land in the occupation of the petitioners

do not form part of the above road or road margin, whereas it is a separate land, adjacent to the road, which belongs to the Government at any

rate, the land in the occupation of the petitioners cannot be considered as a road or public street. In support of the above contention, that the

properties which are in their occupation are Government poramboke, as on this date, no revenue record has been produced by the writ

petitioners. Further, the B-Memo. charge receipts also failed to enlighten that the present Town Survey Numbers are classified as "Government

Poramboke", coming under the control of the Government, not under the control of the first respondent/Municipality. The averments pointed out

by me, as available in the affidavits of the petitioners, would disclose that all the petitioners are occupying small portions nearer to the road leading

to Sengodampalayam village from Salem main road and in this view, it could be said, without contradiction, that the said property should come

within the meaning of "road margin", unless it is shown, they are having separate Town Survey Numbers, not coming under the classification of

"Road" or it is beyond the margin of road, between road margin and some other property. For this purpose, we have to see the counter filed by

the first respondent/Municipality and the documents relied on by them.

23. In the counter filed by the first respondent, it is stated that the petitioners are residing in T.S.Nos.12/1, 12/2 and 12/3 and the area therein is

classified as "poramboke road" in the revenue records, wherein the revenue authorities permitted the first respondent Municipality to lay a road for

free access for the Weavers Colony, which came into existence in the year 1956. It is further alleged at the end of paragraph 2 that in view of the

fact that Municipality has laid the road, the Municipality is having the power under the Act, to remove the encroachment on road side and because

of the further fact that the Government has given this property to lay a road, they are not entitled to evict the encroachers under the Land

Encroachment Act. For taking steps, it is alleged in paragraph 3 of the counter that the encroachment of the land by the petitioners, has obstructed

free flow of traffic and due to the encroachment, the width of the road is reduced to 23 feet, though, as conceded by the petitioners themselves, the

width of the road was originally 40 feet, thereby showing that the width of the road is reduced by the encroachment. In paragraph 7 of the counter,

it is further stated by the first respondent Municipality that the petitioners have encroached the road margin and therefore, the land is not a revenue

poramboke and the encroachment being upon the road margin, the first respondent is having power under the Tamil Nadu District Municipalities

Act, to evict the petitioners. The averments in the counter affidavit of the first respondent, as extracted above, which are relevant, are not

challenged by the petitioners by filing any reply affidavits, producing any documents.

24. The person, who is the cause for taking the action for the removal of the alleged encroachments viz. the 4th respondent also, in his affidavit has

stated that because of the encroachments on the road side margin, the width of the road is reduced to 23 feet causing high congestion due to heavy

movement of people as well as vehicles in the area, a developing part of the town.

25. The fourth respondent, while making an application to implead himself as a party to the above writ petitions, also filed Town Survey Register

Extract for T.S.Nos.12/1, 12/2 and 12/3, which would indicate that as on this date, the Survey Nos.12/1, 12/2 and 12/3 are classified as "road"

vesting with the Commissioner of Tiruchengode Municipality. The entire area available in T.S.Nos.12/1, 12/2 and 12/3 including the portions

occupied by the writ petitioners is classified as "road", vested with the Municipality. As admitted by the writ petitioners, in their affidavits, they are

adjacent to the road, which is admittedly in S.Nos.12/1, 12/2 and 12/3. It is not the case of the writ petitioners, as seen from the affidavits, by

producing any other document, that in S.Nos.12/1, 12/2 and 12/3 though there is a road, that portion alone is classified as "road", leaving the

balance area as "Government poramboke", in order to say that their occupation will not fall within the meaning of "road margin". As indicated

above, "public street" would include the area which lies on either side of the road way, upto the boundaries of the adjacent property, whether that property is private property or property belonging to the Government. If it had been shown that the road margin ends away from their occupied property and their occupied portion is beyond the road margin, then only, the definition for "public street", will not be attracted, taking away the jurisdiction of the Commissioner of Municipality. In this case, by producing Town Survey Register Extract for T.S. Nos. 12/1, 12/2 and 12/3, it is proved beyond doubt, that the entire area is classified as "road" and therefore, the occupation of the petitioners in T.S.Nos.12/1, 12/2 and 12/3, should come within the meaning of "encroachment upon the road margin", empowering the Municipality to take action, as contemplated u/s 182 of the Tamil Nadu District Municipalities Act.

26. The submission of the learned senior counsel Mr. K.M. Vijayan, appearing for the fourth respondent, placing reliance upon the Town Survey Register Extract, as well as the guidelines fixed by the Full Bench of this Court, would suggest, undoubtedly, that the writ petitioners had no right to occupy the road margin or the road, as the case may be and asserting the ground reality that all the petitioners are in occupation of a portion of the property in T.S.Nos.12/1, 12/2 and 12/3, the Municipality have issued notices, legally, which requires confirmation and not disturbance.

27. The submission of the learned Counsel for the writ petitioners, that the Town Survey Register Extract must be the document manipulated by the Municipality, is not acceptable to me in the absence of contra iota of evidence. If S.Nos.12/1, 12/2 and 12/3 had not been classified as "road poramboke", as seen from the documents, then, it should have been classified as "Government Poramboke", as on this date. As conceded in the counter, originally it was a "Circar Poramboke" and the Circar viz. the Government elsewhere in 1956, permitted the Municipality to lay road, thereby impliedly vesting that property with the Municipality. It is admitted that there is a road adjacent to the petitioners occupation of the properties and it is also admitted that the said road is maintained by the Municipality. The road is within the municipal limits, maintained by the Municipality. No case of Highways maintaining the road, taking away the jurisdiction of Municipality, as indicated supra. Therefore, it is the duty of

Municipality, as held by the Full Bench of this Court, in the judgment cited supra, to keep the road free from encroachments. It is shown, by the encroachment, even the breadth of the road is reduced. The original width of the road, even as admitted by the petitioners, is 40 feet and at present, on ground, the width of the road is only 23 feet, as averred in the counter, thereby showing the petitioners should have encroached the road margin alone, by putting up superstructures for which, there might have been taxes, but that will not clothe any right of ownership over the land in favour of the petitioners.

28. For these reasons, I am constrained to hold, that the properties which are in the occupation of the petitioners are classified as "road" which would come within the meaning of "public street"; that since the same is lying within the Municipal limits of Tiruchengode, the Commissioner of the Tiruchengode Municipality is empowered to order eviction, as proposed under the impugned notices, which are perfectly valid, not liable to be quashed, considering the further fact, action is being taken, pursuant to the direction given by this Court, at the instance of the fourth respondent. In the light of the above discussion, all the writ petitions are devoid of merits and they are dismissed. No costs. Consequently, all the W.P.M.Ps. and W.V.M.Ps. are closed.