

(1998) 11 MAD CK 0166

In the Madras High Court

Case No : W.A. Nos.907 to 909 and C.M.P.Nos.9803 to 9807 of 1998

V. Arunagiri and others

APPELLANT

Vs

The Divisional Engineer, National Highways, Thiruvannamalai
and others

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Land Encroachment Act, 1905 — Section 6(2), 7

Citation : (1999) 1 CTC 1 : (1999) 1 LLJ 995 : (1999) 1 MLJ 308

Hon'ble Judges : Shivaraj Patil, J;K.P. Sivasubramanian, J

Bench : Division Bench

Advocate : Mr. B.S. Gnanadesikan, for the Appellant; Mr. S. Natarajan,
Additional Government Pleader, Mr. K. Sridhar, Mr. S. Parthasarathy for M/s.
Sarvabhauman Associates, for the Respondent

Judgement

Judgement Pronounced by Shivaraj Patil, J.—Heard the learned counsel for the parties.

2. These three Writ Appeals are directed against the common order dated 29.6.1998 made by the learned single Judge in Writ Petition Nos.1959, 2740 and 2796 of 1990. The writ petitioners have filed these writ appeals, as the Writ Petitions were dismissed by the aforesaid common order of the learned single Judge. The facts and questions of law that arise for consideration are common to each of the appeals. Hence, they are being disposed of by this common judgment.

3. Briefly stated, the facts leading to the filing of these writ appeals are the following:-

The appellants contend that their fathers occupied the respective pieces of land, abutting Chengam Road, about thirty years before the filing of the writ petitions and they constructed houses on the respective lands; the second respondent-- Municipality assigned Door Numbers to the respective houses; the house-tax is

being paid to the second respondent--Municipality for the last 30 years, for which receipts were issued by the second-respondent--Municipality; thus the second respondent recognised the ownership of the appellants to the said houses; the Tamil Nadu Electricity Board has given electricity connection to the said houses. It is the further case of the appellants that due to the political motives, pressure was brought on the first respondent to demolish the houses, without any justification. The appellants contend that they are in continuous occupation of the sites and the houses built thereon; their names are found in the voters' list, ration card etc., even assuming that the appellants are encroachers, even then the provisions of the Tamil Nadu Land Encroachment Act, 1905 (for short, "the Act"), have to be strictly followed before taking action, in that the respondents ought to have issued notice u/s 7 of the Act, giving opportunity to the appellants and thereafter should have proceeded to pass orders u/s 6 of the Act; no order was made u/s 6 of the Act; nor any notice was issued to them u/s 7 of the Act; as such the respondents had no jurisdiction to demolish the houses of the appellants arbitrarily. According to the appellants, the provisions of the said Act not only guaranteed notice, but also time limit within which they have to vacate the premises; the Act also guarantees an enquiry by the Collector, if resistance is made questioning the eviction; Section 6(2) of the Act makes it clear that the power is vested with the Collector to regularise the encroachment. It is also stated that there is a Government Order which directs that if the constructions made are not objectionable, the lands can be assigned to the persons in occupation, by collecting double the market value. It is further submitted that there are 100 houses in a row abutting the appellants houses and all the houses are in the encroached land, but the same were not demolished, nor any attempt was made to demolish them; but only the appellants' houses alone are chosen for demolition; they have made representations for assignment of patta, but no action has been taken. Under the circumstances, the writ petitions were filed for issue of mandamus by directing the respondents not to demolish the houses of the appellants or evict them from the said house.

4. The counter affidavits were filed contending that the levy of tax by the second respondent and the electricity connection given by the Tamil Nadu Electricity Board cannot confer the ownership to the appellants on the houses; the appellants have not obtained No-Objection Certificates from respondent No.1 for getting electricity connection. It is also contended that payment of house-tax and electricity charges, finding their names in the Voters' List, ration cards etc., do not give rights over the Highways land to the appellants to claim ownership; the land is required for widening of road; eviction was conducted throughout the town of Thiruvannamalai from 5.2.1990, after giving wide publicity by public address system and by beating torn tom. It is denied that the appellants applied for assignment of land; even if they applied, the request cannot be complied with, as the lands are required for widening the road and for strengthening the road side margins. Thus, the respondents prayed for dismissal of the writ petitions.

5. W.P.No.1959 of 1990 was admitted on 20.2.1990 and interim injunction was granted therein on the same day. W.P.Nos. 2740 and 2796 were admitted on 9.3.1990. Interim injunctions were made absolute on 1.10.1991.

6. The learned single Judge took the view that the appellants have put up the buildings on Government land; they have also admitted the title of the Government to the land; that being the position, they are the trespassers. Hence, relying on the various decisions, the learned single Judge held that the appellants cannot assert their rights over the houses and the land, as they are mere trespassers and that equitable jurisdiction under Article 226 of the Constitution of India could not be invoked to grant relief sought for in the Writ Petitions. Accordingly, he dismissed the writ petitions by the common order. Hence, these writ appeals are filed as stated above.

7. The learned counsel for the appellants strongly contended that the learned single Judge did not consider the specific contentions raised by the appellants in the affidavits filed in support of the writ petitions that the respondents could not demolish the houses or evict the appellants without following the procedure as contemplated under Sections 6 and 7 of the Act; the decisions referred by the learned single Judge in the impugned common order relate to exercise of equitable jurisdiction under Article 226 of the Constitution of India, in relation to unauthorised occupants or trespassers and also as to the extent of the protection to be given by the Courts in regard to the possession of such persons; but in those cases, protection was not available to the parties as are available under Sections 6 and 7 of the Act; the Act itself is "Tamil Nadu Land Encroachment Act" and it takes note of unauthorised occupation or the acts of trespass; and even to remove such encroachments, provisions are made. The learned counsel also added that the question of law in regard to removal of encroachment on the Government Land, is made clear by the various judgments of this court.

8. The learned Additional Government Pleader for respondent No.1 contended that the appellants being trespassers/encroachers, were not entitled to any protection as such; after giving publicity as to removal of encroachments through Public Address System, several encroachments were removed in the same town by the second respondent; mere payment of house-tax or getting electricity connections or the names of the appellants finding place in the Voters' List did not confer any right on them over the property.

9. The learned counsel for the remaining respondents did not dispute, as to the legal position stated by the learned counsel for the appellants, referring to the provisions of the Act. They also did not dispute that notices were not given to the appellants u/s 7 of the Act, to take action u/s 6 of the said Act. They submitted that action could be taken against the appellants as provided in the said Act.

10. We have carefully considered the submissions made by the learned counsel for the parties. We do not find any reference to the provisions of the Act in the impugned order in these writ appeals. The learned single Judge has also not

dealt with the specific contentions raised by the appellants, based on Sections 6 and 7 of the Act, claiming notice and opportunities to them before proceeding to take action for the demolition of their houses or for, eviction from the land. There is no serious dispute that the lands on which the houses are built, belong to the Government. Even if the appellants were the encroachers or trespassers, their buildings cannot be demolished without following the necessary procedures as contemplated under the Act and without compliance with the requirements of sections 6 and 7 of the Act. It is not disputed that no notices u/s 7 of the Act were issued to the appellants.

11. The Division Bench of this Court in Hamsavalli and etc. Vs. The Tahsildar, Vridhachalam, South Arcot District, has held that issuing of prior notice u/s 7 of the Act before taking action u/s 6 of the Act is mandatory and that non-issuing of such notice u/s 7 of the Act vitiates the eviction proceedings. In the said judgment, reference is made to a decision of a learned single Judge of the High Court of Andhra Pradesh in Ravipudi Abbayya Vs. State of Andhra Pradesh and Others, . In the said judgment, the learned single Judge stated thus:-

"It is clear from the reading of Sections. 6 and 7 that the following conditions and steps of procedure have to be fulfilled and followed before a person could be legally evicted from the occupation of Government land: (1) first the land must be shown to be Government property in which Government have a subsisting right on the date of the proposed eviction, (2) a notice should issue under S.7 and should be served on the person concerned to show cause before a date to be fixed why he should not be proceeded against under S.6 of the Act; and (3) on service of such notice and if sufficient cause is not shown, serving a notice requiring him within such time as the Collector may deem reasonable to vacate the land; and (4) and if such notice is not obeyed, directing removal of the person from the land; and (5) if such person in occupation resists or obstructs, a summary enquiry by the Collector, shall be held and only after the Collector is satisfied that the resistance or obstruction is without any just cause, he could issue a warrant for his arrest and on his appearance commit him to close custody.

Any act or attempt at summary eviction without following the procedure is totally illegal and cannot be recognised as valid. Mere service of notice periodically under S.7 is ineffective and does not give rise to a cause of action."

The Division Bench of this Court agreed with the statement of the learned single Judge of the Andhra Pradesh High Court extracted above, and added that the language of Section 7 of the Act is unambiguous, when it says that before taking proceedings u/s 6 of the Act, the authority concerned shall cause to serve on the person reputed to be in unauthorised occupation of the land, being the property of Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against u/s 6 of the Act. The Division Bench went on to say 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, and any departure therefrom

cannot be easily tolerated. The facts in these appeals are not disputed, inasmuch as the land on which the houses are built by the appellants belongs to the Government; they are encroachers or unauthorised occupants and there is nothing to show that the provisions of the Act are not attracted to the cases on hand.

12. In *Sri Chamundi Leather and Others Vs. The Collector and Others*, , a learned single Judge of this Court has taken the view that issuing of notice u/s 7 of the Act is a condition precedent for passing order u/s 6 of the Act. In other words, notice u/s 7 of the Act is mandatory for taking action u/s 6 of the Act for eviction of the unauthorised occupants/encroachers from the land. To the same effect is another judgment of a learned single Judge in *Gooda Srinivasalu Naidu Vs. The Collector and Others*, . In the said judgment, the learned single Judge has referred to the Division Bench judgment in *Hamsavalli and etc. Vs. The Tahsildar, Vridhachalam, South Arcot District*, .

13. The learned Additional Government Pleader cited the decisions in *Thirumangalam Fish, Vegetables Merchants" Sangam Rep. By its Secretary U. Panchatcharam v. The State of Tamil Nadu Rep. By its Secretary*, 1995 TLNJ 251 and *R.K. Nagar Thoguthi, etc., Association v. The Collector of Madras and 2 others*, 1993 W.L.R. 409. These decisions are not directly on the point with reference to the controversy raised in these writ appeals. Further, they govern the facts of those cases. Hence, they do not advance the case of respondents 1 and 2.

14. Having regard to the facts which are not in dispute in these appeals and in the light of the law laid down in the aforementioned decisions, we are of the view that the respondents cannot take action against the appellants to demolish their houses, which are in their occupation, without issuing notice u/s 7 of the Act, so as to pass an order u/s 6 of the Act to evict them or to demolish their houses. This being the position, the appellants are entitled to succeed in these Writ Appeals.

15. In the result, for the reasons, stated, we allow these appeals and set aside the common order of the learned single Judge impugned in these Writ Appeals, so far it relates to the appellants. It is open to the respondents, if they so desire, that the encroachments are to be removed in relation to the appellants, they can do so, but by following the procedure as contemplated under the provisions of the Act, in particular, Sections 7 and 6 of the Act or any other law. The houses of the appellants shall not be demolished or they shall not be evicted from the land and houses in question, without following the proper procedure as indicated above, or without adopting any appropriate course, in accordance with law. It is open to both the parties to take all the contentions that are available to them, in case proceedings are taken up. There will be no order as to costs. Consequently, C.M.P.Nos. 9803 to 9807 of 1998 are closed.