

(2001) 05 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 1736 of 2001 and W.M.P. No's. 2365 and 4279 of 2001

Victory Educational Trust

APPELLANT

Vs

The Principal Commissioner and Commissioner of Land Reforms and Others

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 05 MAD CK 0001

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S. Veeraraghavan, for the Appellant; R. Thirugnanasambandam, Special Govt, Pleader for Respondents 1 to 5 and R. Krishnamuorthy for G. Govindarajan and S. Murugappan for 6th Respondent, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—In this writ petition, the Petitioner prays for the issue of a writ of mandamus to restrain the Respondents from evicting or dispossessing the Petitioner from Survey Mps358/1, 358-2, and 358/3 of an extent of 2.457 acres occupied by Sri Venkateswara Matriculation Higher Secondary School, affiliated to the Petitioner /Trust except in accordance with the procedure contemplated under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975.

2. The sixth Respondent and his family members were the owners (of the property in dispute of an extent of 2.47 acres. They had purchased the property from one Subaida Begum. The property was taken over by the Government under the provisions of the Tamil Nadu Urban Land Ceiling Regulation Act, 1978. The lands came to be subsequently vested with the Government and Revenue records were also amended and classified as belonging to the Government. But on appeal filed by the sixth Respondent, the Special Commissioner of Land Reforms by his order dated 12.1.1995 set aside the proceedings and remanded the case back for de novo enquiry to the Competent Authority, Poonnamalle. The

Competent Authority by his order dated 17.2.1995, held that the land being agricultural lands, the provisions of the Act were not attracted and hence the proceedings were dropped.

3. The above facts are not in dispute. The sixth Respondent thereafter made repeated attempts before the Revenue Authorities for reclassifying the lands and also to restore possession of the land. On 23.9.1999 the Assistant Commissioner (ULT), also directed the Tahsildar to take steps to restore village and taluk accounts, which were standing in the name of the Government to be restored to its original position. Since there was no further response, the sixth Respondent filed a writ petition in W.P. No. 18334 of 1999 praying for the issue of a writ of mandamus to direct the Respondents therein, the Revenue Authorities to restore the lands to its original position by making necessary changes in the Village and Taluk accounts as directed by the Assistant Commissioner, (ULT), on 23.9.1999 and directed them to receive the Urban Land Tax. This Court by order dated 23.7.2000, after taking note of the representation on behalf of the Government that mutation of Patta had already been effected in favour of the sixth Respondent, held that nothing further survived in the Writ Petition and the writ petition was disposed of.

4. In this background, the Respondents, Revenue Authorities appear to have taken action for eviction against the unauthorized occupants which has given cause for the writ petition being filed by Victory Educational Trust. According to the Petitioner Trust, the school was started with an idea of serving the downtrodden community. The school building has been constructed on an area of 4.5 acres and the Director of School Education has granted recognition to the school. Some of the conditions for recognition were suitable building, laboratory, library and adequate playgrounds. He applied to the Government for allotment of excess vacant land to the institution for having a big playground.

5. Next to the school, there was a vacant Government land of a total extent of 2.47 acres and the Petitioner had applied for the same. The said application was pending. The Petitioner recently came to know that the sixth Respondent had filed writ petitions in W.P. No. 18339 of 1999 and W.P. No. 18439 of 2000 in the context of the extent of 2.47 acres in survey No. 358/1 to 3. The school playground came squarely within the said area and there was also a staff quarters beyond the compound wall out of 2.47 acres. The Government records showed that the Government was the owner of the property. The Petitioner occupied the land and had utilized it as a playground and had put up a compound wall costing Rs. 9,00,000/- of public Trust money. The school is a coeducational institution and is recognized by the Government. The school was run on best standards and with his rich experience he guides the institution in achieving the aim and objectives of the management. The faculty consists of diligent team of teachers who are experienced and dedicated. On the other side of the playground more than 25 houses have been constructed for housing some of the staff members and they have received water connection, drainage connection

and they have also received a memo from the Revenue Authorities.

6. The Petitioner further contends that in the earlier two writ petitions filed by the sixth Respondent, the Petitioner has not been made as a party. The Petitioner was in occupation of 2.47 acres only as unauthorized occupant and principles of justice require that there should be a reasonable opportunity to explain their case. The occupation by the Petitioner was permissive occupation which could also be converted into adverse possession if it is established that the Petitioner acquired adverse title with the knowledge of the actual owner. The Petitioner and others have been in occupation or more than 10 years uninterruptedly and continuously. Therefore, the Petitioner being an unauthorized occupant he would come squarely under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants), Act, 1975 and hence, there can be no eviction without following the procedure under the Act.

7. In the counter filed by the sixth Respondent, the various contentions raised by the Petitioner had been denied. Though the entries in the Revenue Records have been restored in the name of the Petitioner, vacant possession of the land had not been given to the Petitioner. After the writ petition in W.P. No. 18334 of 1999 had been filed, the Respondents had changed the Village and Taluk accounts and the sixth Respondent also paid Urban Land Tax of Rs. 61,500/- . The land was held illegally under the custody of the Government from 1992 till date. The Government had allowed the portion of the land to be occupied by the trespassers during the said period when the land was under the custody of the Government. Therefore, the Government is bound to hand over vacant possession. The Petitioner has not come to court with clean hands. When there were proper steps taken by the Government to clear the encroachments, he had behaved high handedly resulting in being arrested by the Ambattur police on a complaint given by two village Administrative Officers who were abused by the Petitioner. The said Administrative Officers were in the process of preparing a list of those who had encroached the land and when the name of the Petitioner was also included in the list, the Petitioner had abused them. The contention that the Petitioner was serving the downtrodden community was not correct and the school was being run on commercial basis. The Petitioner had actually encroached only to an extent of 1.5 acres and not 2.47 acres as alleged by the Petitioner. The Petitioner has not constructed any building on the said portion of the sixth Respondent. The construction of the school building is in Survey No. 358 which is the adjacent land. The Petitioner as well as all the other persons were in illegal occupation and liable to be evicted. The sixth Respondent who has got land ceiling proceedings dropped is entitled to seek restoration/restitution from the Government and it is the duty of the Government to restore the lands belonging to the sixth Respondent. The Petitioner has not stated all the facts as regards the actual date of commencement of his illegal occupation.

8. A reply affidavit has also been filed by the Petitioner. In the reply, the Petitioner has stated that the sixth Respondent has misrepresented the facts in

the earlier writ petitions as stated above. He has not mentioned about the existence of the school, playground and the compound wall and if the said facts had been disclosed, the learned judge would have definitely ordered notice to the writ Petitioner. The fourth Respondent has also not correctly mentioned the particulars as regards the existence of the school. The Petitioner further stated that no notice under the Tamil Nadu Public Premises Act had been issued. It is further stated that the sixth Respondent who was a resident in the city had not raised any objections to the construction of the compound wall and the place being used as a playground and a school. It is further contended that the Petitioners being encroachers are entitled to notice under the Act and only after a notice was issued to all the persons concerned, the eviction could be carried out. The Petitioner was serving the cause of the downtrodden communities and hence the children are likely to be put into great hardship if the eviction is carried out.

9. Mr. S. Veeraraghavan, learned Counsel for the Petitioner contends as follows:

(i) The sixth Respondent was entitled to only one share in the property and hence, the orders obtained by him are not enforceable and the other sharers had not sought for any relief.

(ii) The sixth Respondent could only file a suit in which case the writ Petitioner would be entitled to take all defences open to him. As far as the Government is concerned, action for eviction can be taken only in a manner known to law. No show-cause notice had been issued as against the school. The school is thus deprived of all the defences available to them.

(iii) The sixth Respondent had misguided the court in not placing all the relevant facts regarding possession and hence liable for contempt of court which may be initiated suo motu by this Court. They ought to have impleaded the school also as a party Respondent even in the earlier writ petitions. In W.P. No. 18439 of 2000 this Court had only directed disposal of the representation of the sixth Respondent in accordance with law. Therefore, the Collector action directly proceeding against the occupants, is not proper. The Government had also not filed any counter and hence the contention of the Petitioner as regards the failure to comply with principles of natural justice is uncontradicted.

10. Learned Counsel for the Petitioner also relied on the judgment of a Division Bench of this Court in Brinda Muthuswami Vs. The Tamil Nadu Small Industries Development Corporation Ltd. and Others, in support of his contention that while taking action under Act I of 1976 there should be proper application of mind by the Authorities as regards the nature of occupation by the occupants.

11. Reliance is also placed on the judgment of this Court in V. Arunagiri and others Vs. The Divisional Engineer, National Highways, Thiruvannamalai and others, . Reliance is placed on the observation that the encroachers and trespassers of Government land and building put up by them cannot be demolished unless the procedure contemplated under Sections 6 and 7 are followed.

12. Reference is made to the judgment of a learned single judge in *Govindarajulu v. Assistant Divisional Engineer* A.I.R.1988 Mad 188 : 100 L.W. 618. It was held that any proceedings by the Government in execution of the scheme in exercise of power under a statute namely, Tamil Nadu Public Premises Act affecting the rights of the citizen, it was necessary that principles of natural justice should be followed.

13. Mr. R. Krishnamoorthy, learned senior counsel for the sixth Respondent contends that even as per the statement of the writ Petitioner, the school has occupied the property only as a playground and hence, the school has nothing to do with the constructions said to have been put up on the property. The school cannot plead for the other encroachers. The Government is obliged to give vacant possession to the Petitioner and the Government is taking action only in accordance with law. The very prayer in the writ petition is only to direct the Government to take action in accordance with law and hence the writ Petitioner has no right to interfere with the action which is being taken against the individual encroachers. The Petitioner had openly described himself to be an unauthorized occupant and hence is liable to be evicted by due process of law. Reliance is placed on the judgment of the Supreme Court in *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, . Reliance is placed on the observation that non compliance with the principles of natural justice will not automatically entitle a person to relief under Article 226 of the Constitution of India unless it was proved that the action had caused prejudice There was no necessary to enforce strict adherence to the principles of natural justice where it would serve only as a useless formality.

14. Therefore, according to learned senior counsel it does not lie in the mouth of a person who is admittedly an encroacher to complain about violation of principles of natural justice.

15. Learned senior counsel further states that |the school is in occupation of only 1.50 acres land not 2.47 acres as claimed by them. Apart from the area occupied by the school as playground, the remaining area is occupied by other individual encroachers.

16. In reply, Mr. S. Veeraraghavan, contends that the observation contained in the judgment of E. Padmanabhan, J. in W.P. No. 18334 of 1999 is that possession had been taken by the Petitioner. It was a wrong fact and hence it was clear that both the sixth Respondent and the Government had not represented the facts correctly to the learned judge

17.I have also heard learned Special Government pleader who has produced file before me and it is contended by him that action is being taken pursuant to the directions of this Court only by issuing proper notice as required under law, individual notices had been sent to the actual occupants and it is at that stage the school had come forward with the present petition. Apart from the portion of the playground there are certain other individual encroachments where several

individuals including employees of the school and other outsiders are occupying in their individual capacity and hence notices had been issued against some of them. The Government was in the process of issuing notice to other encroachers. Notice will be issued to the school also with reference to the open space in their occupation.

18. I have heard both sides and also the Special Government Pleader. This is a typical case which reflects the regrettable level to which this state had become the encroachers paradise. This is done with the blessings of the Revenue Authorities and local politicians under whose very nose such encroachments take place and they would not take any action. [Even if any action is taken, the authorities would deliberately not issue any show cause notice as required under the Land Encroachment Act of the Public Premises Act and thereby collusively enable the encroachers to obtain an order of stay from the court and to squat on the property successfully. I have come across many instances where writ petitions are ordered with directions to the Revenue to proceed further in accordance with law and subsequently either no steps are taken or steps would be taken again without issuing show cause notice and thus enable the encroacher to approach the court again and obtain stay. Encroachments can neither be legally nor morally justified even in the case of poor people/encroachers. The encroachment of private property by any one can never be justified. The encroachment of public property by poor people appears to be taken for granted and tolerated at least in cases where the encroachment does not cause any obstruction to any public Highway or pathway or places not required for public use. But the sad fact remains that encroachment by poor people is really a myth and a passing phase and ultimately what happens is that the real beneficiaries are the land grabbers and those who over power the poor people with money or muscle power and the encroached property become vested with them. The idea of tolerating the virus of encroachment for the benefit of the poor and landless people is only a myth and card for the land grabbers and the corrupt among the Revenue Officials and politicians who actually benefit ultimately as a result of legalizing such illegal occupations by granting patta. To cite an instance, in W.P. No. 544 of 2001, the encroachment was for residential purpose in the beginning. The encroacher also managed to secure electricity service connection. Subsequently, a request was made for power connection for commercial purpose for running a flour mill. The request was rightly rejected by the Tamil Nadu Electricity Board stating that no power connection can be given for a property which is a poramboke property and in illegal occupation. This is only an example of the modus operandi of how the encroachment by poor people ultimately becomes the property of such land grabbers either directly or indirectly as benami.

19. Here is a case where an Educational institution/Trust which claims to be serving the public, unashamedly trying to justify its illegal occupation of the property which admittedly does not belong to them. A perusal of the affidavit in support of the writ petition discloses most untenable contentions both legally and

morally. The Trust claims to be serving the cause of the public in imparting education and therefore, asserts that they are not to be disturbed even though it is admitted that their possession is illegal. In my opinion even if the institution is a charitable institution that cannot justify illegal occupation of a public property much less a private property. The Petitioner institution is definitely not a charitable institution and to my specific question Mr. S. Veeraraghavan was fair enough to admit that the institution was definitely a profit earning institution. The fact that the Supreme Court had observed in Unnikrishnan 's case that imparting education is a public function, does not mean that institutions which had industrialized the field of education could go about grabbing public or private property and that such illegal occupation should be legalized. The fact that a playground is required for recognition of the institution is no justification for the institution to grab a public or private property. It is rather unfortunate that the Petitioner institution should try to justify its illegal occupation of lands in question on the ground that they are imparting education to the students. The claim of adverse title by the Petitioner institution is further more depressing and indicative of the high handed attitude of the Petitioner. Admittedly, the encroachment of the land by the Petitioner and others was only subsequent to the mutation of the records in favour of the Government. It is equally an admitted fact in paragraph No. 7 of the affidavit that the occupants are receiving a memo notices from the Government. In this background the claim of adverse title by the Petitioner is to be stated only to be rejected.

20. The objections that the Petitioner being only a part owner of the property cannot maintain the writ petition is also not sustainable. Any co-owner can seek for appropriate relief.

21. As stated earlier, the fact that the Petitioner is in illegal occupation of the property and that the property does not belong to them is admitted. The prayer in the writ petition itself is sufficient proof of it. In fact, the Petitioner had repeatedly and proudly proclaimed that they were in illegal occupation and therefore they can be evicted only in a manner known to law as provided under the Tamil Nadu Public Premises Act. Therefore, in the said background the only issue which requires to be considered is as to whether the requirement under law as envisaged under the said Act had been complied with or not.

22. There can also be no dispute over the fact that even apart from the stand taken by the Petitioner himself, the property would continue to be that of the Government till actual possession is handed over to the party from whom the Government had taken over. The land taken over under the Ceiling Act had become vested with the Government. It is also admitted by the Petitioner that the encroachment had taken place only after the entries in the Revenue records were transferred in favour of the Government. Therefore, revesting to the original owner cannot take place by mere mutation of the records in favour of the original owner. There should be a proper handing over of the vacant possession to the original owner and till then revesting cannot be complete and the

Government is duty to bound to hand over possession to the original owner of the property. Therefore, even apart from the admission of the Petitioner himself, the Government is entitled to invoke the provisions available to them to clear the encroachment as provided either under the Land Encroachment Act, 1905 or under the Tamil Nadu Public Premises Act, 1975. Having regard to the facts of this case, the Government is duty bound to have over vacant possession to the original owner both in law and in equity, failing which the Government would be liable to pay heavy damages and compensation to the owner of the land.

23. As stated by learned Special Government Pleader, the Government had only taken steps to serve notices on the individual occupants and it is at that stage the school had come forward with this Writ petition. It is positively asserted by the sixth Respondent that the Petitioner/school is in occupation of only 1.5 acres and not the entire 2.47 acres, and that the contention of the school otherwise is false. In this context, in the counter, the sixth Respondent had specifically states in paragraphs Nos. 5 and 6 that the Petitioners were in occupation of only 1.5 acres and not 2.47 acres and no construction had been put up in the said extent of 1.5 acres. Though a reply affidavit had been filed by the school, there is no specific denial of the said contention by the sixth Respondent, Mr. S. Veeraraghavan learned Counsel representing the Petitioner also does not dispute that the actual extent of the playground is only 1.5 acres. In fact it is admitted in the affidavit itself that the construction beyond the playground is also within the total extent of 2.47 acres. Therefore, I am inclined to hold that the school has no locus standi to plead for other en-croachers. The fact that some of the eneroachers are employees of the school, does not alter the situation. The provisions of both the Acts as aforementioned can be invoked only as against the actual occupants and there is no necessity to issue notice to the school, where the said occupants are in actual possession. They are individually answerable for their illegal occupation. The attitude on the part of the school to plead for others is misconceived and unsustainable. Therefore, the Government is entitled to proceed further by issuing show-cause notice and other consequential notices to the actual occupants and the school and to proceed further. In fact this is what the Petitioner himself wants in the writ petition.

24. In the result, this writ petition is disposed of with the following observations:
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The illegal occupants are liable to be evicted after complying with the legal requirements as envisaged either as under Tamil Nadu Act 3 of 1905 or under Tamil Nadu Act 1 of 1976 whichever is applicable and in accordance with law. Notice to show cause and other consequential notices have to be issued to the actual occupants and if no notice has yet been issued to the school/Petitioner. With reference to the property in their possession, Respondents 1 to 5 are directed to proceed further in accordance with law. No costs, connected W.M. Ps. are closed as unnecessary.