

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.12.2018

CORAM :
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32131 of 2005
and
WP.MP.35107 of 2005

R.Mohan Raj

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St.George, Chennai - 9.
2. The District Collector,
Salem District.
3. Revenue Divisional Officer,
Salem.
4. Thasildhar,
Salem Taluk, Salem

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari calling for the records of notice dated 09.09.2005 issued by the 4th respondent under Sec.6 of the Tamil Nadu Land Encroachment Act 1905, in respect of the Punja Agricultural Land in survey Nos.39/1 with extent to 1.54.5 hectare, survey No.39/2 with an extent of 0.66.0 hectare; survey No.39/3 with an extent of 0.58.5 and survey No.55/3 with an extent of 0.13.5 hectare with a total extent of 2.92.5 hectares of Reddiyur village, Salem Taluk, Salem.

For Petitioner : M/s.V.John Aquinas

For Respondents: Mr. Akhil Akbar Ali,
Government Advocate

O R D E R

The notice issued under Section 6 of the Tamil Nadu Land Encroachment Act 1905, in respect of the Punja Agricultural Land in survey Nos.39/1 with extent to 1.54.5 hectare, survey No.39/2 with an extent of 0.66.0 hectare; survey No.39/3 with an extent of 0.58.5 and survey No.55/3 with an extent of 0.13.5 hectare with a total extent of 2.92.5 hectares of Reddiyur

village, Salem Taluk, Salem, is under challenge in the present writ petition.

2. The writ petitioner claims that he is the owner of the Punja Agricultural land in survey Nos.39/1 with extent to 1.54.5 hectare, survey No.39/2 with an extent of 0.66.0 hectare; survey No.39/3 with an extent of 0.58.5 and survey No.55/3 with an extent of 0.13.5 hectare with a total extent of 2.92.5 hectares of Reddiyur village, Salem Taluk, Salem.

3. The lands described above were owned and possessed by Vedhavysalu, Kuppammal, Venkat alias T.S.Venkataraman and their ancestors for several decades. The aforesaid owners of the land sold the property jointly in favour of the writ petitioner through the registered sale deed dated 16.09.1989. The petitioner states that the patta also changed in the name of the writ petitioner and he was in the continuous possession and enjoyment of the property described in the present writ petition.

4. However, the respondents issued a notice under the provisions of the Tamil Nadu Land Encroachment Act 1905, stating that the portion of the land under the possession and occupation of the writ petitioner's are classified as "lake" in the revenue records. In view of the fact, the classification of the land as per the revenue records is lake, the respondents issued notice for eviction. Challenging the said notice, the present writ petition is filed.

5. The writ petitioner states that he is the absolute owner of the property and in possession and enjoyment of the same. Thus, the notice issued under the Encroachment Act is untenable. The impugned notice states that the property described in the present writ petition is the Government land and the writ petitioner is extracting ground water from the land belongs to the Government. In view of the fact that the writ petitioner is extracting ground water illegally, notice was issued under the provisions of the Land Encroachment Act for eviction of the writ petitioner from the Government land. This apart, the land is classified as lake in the revenue records.

6. This Court is of an opinion that, encroachment is an evil menace. Few greedy men are encroaching the Government land and public properties for their personal gains and for unlawful enrichment. The Authorities Competent are bound to vigil over all such Government lands and protect the properties belong to the Government for the benefit and welfare of the public at large. Encroachment is an evil menace and this Court as well as the Apex Court repeatedly reiterated that, encroachments in water bodies and water resources are to be evicted without any

leniency. All such encroachers are to be evicted by following procedures contemplated under law.

07. ENCROACHMENT - AS AN ISSUE:-

(1) The Black's Law Dictionary defines encroachment as "an infringement of another's rights; an interference with or intrusion onto another's property". The word 'Encroach' is defined as "to enter by gradual steps or stealth into the possessions or rights of another; to trespass or intrude; to gain or intrude unlawfully onto another's lands, property or authority". Thus, it is unambiguous that encroachment is an offence. Encroachment amounts to a criminal trespass into the property belongs to another.

(2) The definition of encroachment is also defined in Section 2(1)(c) of the Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905). Encroachment means, unauthorised occupation of land and public land by way of putting temporary, or permanent structure for residential or commercial use or any other use.

(3) The encroachment process gradually gains momentum from the following factors:-

- (i) Lack of periodical monitoring;
- (ii) Weakening of Social bondage;
- (iii) People's justification of their position by citing wrong examples;
- (iv) Delayed realisation of the ill-effects caused by encroachments;
- (v) Negligence of Government functionaries and lack of timely action. However, it is pertinent to note the fact that the basis of the alarming rise of encroachments is the greed, selfishness, and jealousy of people.

(4) Section 441 of the Indian Penal Code states; "whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'." The term 'criminal trespass' has been defined in Black's Law Dictionary as "a person who enters on the property of another without any right, lawful authority or an express or implied invitation or licence". But when trespass is committed with a criminal intention, it is treated as an offence and is made punishable under the Indian Penal Code. A punishment is that "whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(5) The land encroachment is a social evil. Encroachment is a passive form of land grab movement, which

mirrors man's innate greed for land and his natural tendency towards aggrandizement of wealth in any form. Encroachment of Government property is a loss not only for the Government but also the public, as huge amount of money would be spent again to acquire new property.

(6) The Government lands are for the welfare of the public in general and to create common infrastructure for the usage and benefit of, we the people of India. Thus, the matter of encroachment of Government land cannot be treated ordinarily and it should be treated as a grave offence against, the State.

(7) Article 300-A of the Constitution of India deals with persons not to be deprived of property save by authority of law. No person shall be deprived of his property save by authority of law. Thus, the State being a "person", cannot be deprived of its right of property and any intruder is liable to be prosecuted under the provisions of the Land Encroachment Act as well as under the Penal Law. Thus, this Court is of the opinion that the rights conferred to a person under Article 300-A of the Constitution of India, is certainly available to the State and the State has got every right to initiate appropriate legal action against the encroachers.

(8) The preamble of the Constitution 'WE THE PEOPLE OF INDIA', is the heart and soul of the Constitution. Article 12 of the Constitution provides definition for the State. Accordingly, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Thus, State is a person and therefore, all public lands belong to the State and we the people of India are the owners of the land. Thus, the right of property provided under Article 300-A is to be extended to the State as a person. In other words, the property belongs to the State is also protected under Article 300-A of the Constitution of India. Thus, any encroacher of a public/Government land is certainly depriving the right of property of the State to possess the same under Article 300-A of the Constitution of India. Therefore, the question of de-linking such encroachers otherwise will not arise at all. Question of extending the equality clause or the discrimination clause will not arise at all to the encroacher as an offender and an offender citing the offence committed by one offender, another one cannot claim that he should also be exonerated from the offence. Such a dangerous proposition, cannot be adopted at any circumstances and in the event of connivance with the officials in this regard also to be viewed very seriously.

(9) This Court wishes to ask a question whether any citizen of this country will allow another citizen to encroach the property owned by him. Litigations in lakhs and lakhs are pending before various Courts in our Great Nation only to establish the rights of such citizen in respect of their

property. Such being the law of this country, how a State land can be allowed to be encroached by another citizen and such offences are dealt in a casual manner by the officials. Due to the constant increase of market value of the immovable property in this Great Nation, the public officials are also contributing for the dilution of the implementation of various laws in this regard, more specifically, while dealing with the Government lands. Such actions deserve to be condemned and such officials are to be dealt with iron-heart and no leniency can be shown to such public officials.

08. The Tamil Nadu Land Encroachment Act, 1905, is an Act, which provide measures for taking unauthorised occupation of land which are the property of the Government. The preamble of the Act provide measures for checking unauthorised occupation of lands which are the property of the Government, whereas, it has been the practice to check the unauthorised occupation of lands which are the property of the Government and by imposition of penal or prohibitory assessment or charge and whereas, the doubts have arisen as to how far such practice is authorized by law and it is expedient to make statutory provision for checking such occupation. The Act provides for removal of encroachment and and the implementation of the Act by the Government officials are to be done in a manner prescribed under the Act. Any violation of the officials also to be viewed seriously.

09. With this background, it is necessary to go into the legal principles laid down by the Courts on encroachments:

(i) In *PANDIA NADAR AND ORS v. THE STATE OF TAMIL NADU AND ORS* [1974 AIR 2044], the Constitution Bench of the Hon'ble Supreme Court rendered a Judgment on 30th April 1974 wherein, the very constitutional validity of the Tamil Nadu Land Encroachment Act, 1905 was tested. While dismissing the Appeals filed by land encroachers, the Hon'ble Supreme Court held as follows:

This Court then went on to apply those principles to the statutes under consideration in the following words :

"The statute itself in the two classes of cases before us clearly lays down the purpose behind them, that is that premises belonging to the Corporation and the Government should be subject to speedy procedure in the matter of evicting unauthorized persons occupying them. This is a sufficient guidance for the authorities on whom the power has been conferred. With such an indication clearly given in the statutes one expects the officers concerned to avail themselves of the procedures prescribed by the Acts and not resort to the dilatory procedure of the ordinary Civil Court. Ever, normally one cannot imagine an officer having the choice of two procedures, one which enables him to get possession of the property quickly and the other which would be a prolonged one, to resort to the latter. Administrative officers, no less than the courts, do not

function in a vacuum. It would be extremely unreal to hold that an administrative officer would in taking proceedings for eviction of unauthorised occupants of Government property or Municipal property resort to the procedure prescribed by the two Acts in one case and to the ordinary Civil Court in the other. The provisions of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. This is not one of those cases where discrimination is writ large on the face of the statute. Discrimination may, be possible but is very improbable. And if there is discrimination in actual (1) [1952] SCR 435 (2) [1962] 2 SCR 125 (3) [1960] 2 SCR 646 (4) [1954] SCR 30.

practice this Court is not powerless. Furthermore, the fact that the Legislature considered that the ordinary procedure is insufficient or ineffective in evicting unauthorised occupants of Government and Corporation property, and provided a special speedy procedure therefore is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. We, therefore, find ourselves unable to agree with the majority in the Northern India Caterers' case."

(ii) In KRISHNAN, L. v. STATE OF TAMIL NADU [2005 (4) CTC 1], His Lordship Justice F.M. Ibrahim Kalifulla, speaking for the Bench, held as follows:

"9. In this connection reference may be made to Article 48A of the Constitution which states: -

"Protection and improvement of environment and safeguarding of forests and wild life: - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

10. No doubt the above provision is in the Directive Principles of State Policy, but it is now well settled that the fundamental rights and directive principles have to be read together, since it has been mentioned in Article 37 that the principles set down in the Directive Principles are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The Directive Principles embody the aim and object of the State under a Republican Constitution, i.e., that it is a welfare State and not a mere police State, vide Kesavananda Bharati Vs. State of Kerala, (1973) 4 SCC 225 (vide paragraphs - 134, 139 and 1714) and embodies the ideal of socio-economic justice, vide Union of India Vs. Hindustan Development Corporation, AIR 1994 SC 988 (1990).

11. Though the early decisions of the Supreme Court paid comparatively scant attention to the Directive Principles in Part - IV of the Constitution as they were said to be non-justiciable and nonenforceable in the Courts (vide Article 37),

the subsequent decisions of the Supreme Court changed this trend and this new trend reached its culmination in the 13 member bench Judgment of the Supreme Court in Kesavananda Bharati's Case (Supra), which laid down that there is no disharmony between the directive principles and fundamental rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble to the Constitution. The Constitution aims at a synthesis of the two, and the Directive Principles constitute "the conscience of the Constitution". Together they form the core of the Constitution, vide Markandeya, V. Vs. State of A.P., AIR 1989 SC 1308 (paragraph - 9). They are not exclusionary, but are complementary to each other, vide Unnikrishnan, J.P. Vs. State of A.P., AIR 199 3 SC 2178. It follows therefore that the courts should uphold, as far as possible, legislation enacted by the State which seeks to remove inequalities and attain 'distributive justice', vide, Lingappa Pochanna Appealwar Vs. State of Maharashtra, AIR 1985 SC 389 (paragraphs 1 6 and 20), Manchegowda Vs. State of Karnataka, AIR 1984 SC 1151, Fateh Chand Himmatlal Vs. State of Maharashtra, AIR 1977 SC 1825, etc., In recent decisions the Supreme Court has been issuing various directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by nonimplementation of the Directive Principles, vide Comptroller and Auditor General of India Vs. Jagannathan, AIR 1987 SC 537 (paragraphs 20-21), Mukesh Advani Vs. State of M.P., AIR 1985 SC 1363, Bandhua Mukti Morcha Vs. Union of India, AIR 1984 SC 802, Animal and Environment Legal Defence Fund Vs. Union of India, (1997) 3 SCC 549, etc.

12. Apart from the above we may also refer to Article 51A (g) of the Constitution which makes it a fundamental duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life". This duty can be enforced by the Court, vide Animal and Environment Legal Defence Fund Vs. Union of India (supra, vide para-15).

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14. Therefore, we direct the respondents 1 to 5 to take necessary legal steps to remove the alleged encroachments made by the respondents 6 to 12 as well as the petitioner over Odai Poramboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents. Inasmuch as this writ petition has come before us by way of a public interest litigation, we take this opportunity to direct the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to

water shortage is ameliorated."

(iii) In an important Judgment, the Hon'ble Supreme Court in JAGPAL SING v. STATE OF PUNJAB [AIR 2011 SCC 1123], has held as follows:

"13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years. "

21. For the reasons given above there is no merit in this appeal and it is dismissed.

10. It is categorically stated in the counter affidavit filed by the respondents that the portion of the land encroached by the writ petitioner is a Government Poramboke land, which is preserved as water body. The Hon'ble Division Bench of our High Court in the case of T.S.Senthil Kumar, Vs. The Government of Tamil Nadu, rep.by its Secretary, Public Works Department, in W.P.No.20021 of 2008 dated 10.02.2010 and the relevant paragraphs are extracted hereunder:

"From the above, it is seen that the Act in question has come not a day sooner, because we have seen that the Ramsar Convention includes as wetlands, not only natural wet lands, but even human-made wetlands such as waste water treatment ponds and reservoirs. Therefore, tanks and tank poramboke lands would definitely require protection from encroachment."

"18. Considering the fact that we have adopted wet land conservation policy which takes note of the environmental value and functions of wet lands and the fact that they deserve to be protected, the State may take steps to protect all water bodies and not only tanks. In L.Krishnan's case - AIR 2005 Madras 311, this Court has referred to the judgment of the Supreme Court in AIR 2001 SC 3215, where the maintenance of ecological balance has been highlighted and this Court has also specifically indicated that it is imperative to see that water storage resources such as tanks, odais, oranis, canals are not obliterated by encroachers. Right to water is a part of life and, therefore, as observed by the Supreme Court in Hinch Lal

Tiwari v. Kamal Devi and others - AIR 2001 SC 3215, demands of economic development must be made without compromising the natural resources of the earth which this generation holds in trust for future generation. The order of inter-generational equity has to be remembered and in fact in the Rio Declaration, to which India is a party, it has been affirmed that environmental protection constitutes an integral part of sustainable development and cannot be isolated from it."

"19. Persistent developmental activities, ignoring the need to protect natural resources, have caused irreparable damage. It is also necessary that the State shall not invoke Section 12 of the Act which results in alienation of tank poramboke lands citing "public interest". Protection of water resources is as much as a public interest issue as any other requirement. The Government may also bear in mind that water resources have to be protected while issuing patta to persons who claim to have resided in the same place for a number of years."

11. The Hon'ble High Court, in the above said case issued directions to the State, which reads as under:

"(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of

Encroachment Act, 2007."

12. The Hon'ble Division Bench of our High Court in W.P.No.26364 to 26376 of 2017 dated 10.10.2017, held as follows:

"8. A perusal of the typed set of documents filed in support of these writ petitions would reveal a shocking and sorry state of affairs. Admittedly, the petitioners are ranked encroachers and however, the concerned revenue officials have failed to take action at the relevant point of time and therefore, allowed them to perpetuate the illegality and the petitioners/their predecessors have, not only stopped with the illegal act of encroachment ; but also got emboldened on account of the inaction on the part of the revenue officials as well as the Local Body officials and proceeded to construct palatial superstructures, without any authorisation or planning permission and also leased out the same for commercial purposes. It appears that it was / is a deliberate and wilful act on the part of the revenue officials as well as the Local Body officials as to the non-taking of any action to abate such illegalities."

"The respondents shall cause inspection of the entire area in question and identify the encroachers as well as the unauthorised / deviated constructions and take necessary and appropriate action within a period of ten weeks from the date of receipt of a copy of this order and file a COMPLIANCE REPORT to this Court."

"The Administrative Department of the Government is directed to identify the officials concerned as to the continued laxity and exhibition of callousness and apathy in performing / discharging their official duties and neglect in protecting the assets of the Government and initiate appropriate Departmental and Criminal action and also file a Status Report."

13. From the said judgments delivered based on the legal principles settled by the Hon'ble Apex Court of India, it is clear that all "Kuttai Poramboke", "Pond Poramboke" and other Poramboke lands belongs to the Government are to be preserved for protecting the Environment and for the usage of the public at large. In this case, it is categorically admitted even by the writ petitioners' that they have encroached the Government Poramboke land and it was classified as "Vari Poramboke lands" and "Pond Poramboke lands", which all are water bodies. Thus, there cannot be any leniency or misplaced sympathy in respect of such encroachments of the Government land and the authorities competent are duty bound to protect the same in all respects. However, this Court is able to find out that the officials have miserably failed to protect such valuable lands of the Government and submitted frequent proposals in favour of the writ petitioners' on extraneous considerations, enabling them to pursue the matter for getting permission in an illegal manner. Thus, the public officials have colluded with the writ

petitioner company for the purpose of the continuance of encroachment of such Government Poramboke lands. All such Government officials are liable for prosecution and suitable disciplinary proceedings are also to be initiated against such persons. The Government officials are the abettors and have equally committed an offence by assisting the writ petitioners' to encroach the land and continue in the encroached land for the past about many years. Thus, the officials concerned are equally responsible.

14. If at all the writ petitioner claims any ownership, title over the property, it is left open to him to approach the Competent Civil Court of Law for the purpose of establishing the title or ownership. However, in the present writ petition on hand, the writ petitioner himself states that the notice was issued based on the revenue records and in the revenue records, the land in question is classified as lake.

15. This being the factum of the case, the respondents are bound to verify the classification once again and proceed with the eviction by following the procedures contemplated under the Encroachment Act. There cannot be any leniency or misplaced sympathy in respect of the eviction of encroachers from water bodies and water resources and the Government Poramboke lands. This Court already passed several orders in the matter of encroachments and the respective District Collectors are directed to convene review meetings of the concerned officials and the Collectors are directed to issue orders to identify all such encroachments in water bodies, water resources and in Government Poramboke lands and evict the encroachers by following procedures contemplated under the Act.

16. In this regard, some of the District Collectors had already issued instructions to all the Sub-ordinates officials to identify the encroachments in their jurisdiction and initiate steps to evict all those encroachers from the Government land, water resources and water bodies. The actions are also in progress in some of the districts. This being the factum of the case, the 2nd respondent / District Collector is also bound to follow the procedures and evict all the encroachers within his jurisdiction. Accordingly, the following orders are passed:-

1. The relief as sought for in the present writ petition stands rejected.
2. The 2nd respondent / District Collector is directed to convene review meetings of the officials concerned and issue orders to identify all the encroachments within his jurisdiction in water bodies, water resources and Government Poramboke lands and initiate action for eviction of all such encroachers by following the procedures contemplated under the Encroachment Act.
3. The District Collector is directed to issue orders to the

officials concerned to protect all the Government lands and Government properties for the welfare of the public at large and for the implementation of the Government schemes in the larger interest.

4. The District Collector is directed to initiate prosecution and disciplinary proceedings against all the Officers who all are committing lapses or negligence or dereliction of duty in this regard.

17. With these directions, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St.George, Chennai - 9.
2. The District Collector,
Salem District.
3. Revenue Divisional Officer,
Salem.
4. Thasildhar,
Salem Taluk, Salem

+1cc to Mr.V.John Acquains, Advocate, S.R.No.84052

W.P.No.32131 of 2005

PVS (CO)

rrs 08/01/2019

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