

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4779 of 2015
and
M.P.Nos.1, 2 & 3 of 2015
and
W.M.P.No.319 of 2017

M/s.Chettinad Cement Corporation Ltd
Ariyalur - 621 707
Rep.by its Company Secretary, Mr.S.Hariharan,
Having registered office at
Rani Seethai Hall Building
No.603, Anna Salai,
Chennai - 600 006. ... Petitioner

vs

- 1.State of Tamil Nadu,
Represented by Principal Secretary to the Government,
Department of Revenue,
Fort St.George,
Chennai - 600 009.
- 2.The Sub-Collector,
Ariyalur,
Ariyalur District.
- 3.The District Collector,
Ariyalur,
Collectorate
Ariyalur District.
- 4.The Special Commissioner & Commissioner
of Land Administration,
Chepak,
Chennai - 600 005.
- 5.The Thasildar,
Ariyalur,
Ariyalur District.

6.The Revenue Divisional Officer,
Ariyalur,
Ariyalur District.

7.The Chief Engineer,
Public Works Department,
Trichy District.
Trichy-20.

8.Mrs.Kalaiselvi

9.Mr.Velusamy

10.Mr.Vinoth Kumar

11.Mr.Dhanavel

12.Mrs.Valarmathi

13.Mr.Saravanan

14.Lakshmi Devi
..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent comprised in impugned proceeding dated 10.02.2015, bearing No.Na.Ka.A5/1849/2014 and quash the same as illegal, arbitrary, and unconstitutional for having passed the same without jurisdiction.

For Petitioner: Mr.A.L.Somayaji, Senior Counsel
For Mr.T.Balaji

For Respondents: Mrs.A.Srijayanthi, Spl GP for R1 to R7
Mr.S.Kamadevan for R8 to R14

WEB COPY O R D E R

The facts presented by the learned Senior Counsel appearing on behalf of the writ petitioner are that on 05.05.2009, the petitioner had sent a letter to the 1st respondent/State Government, seeking permission to utilize the Government Poramboke Lands on payment of prescribed fee as determined by the Government, for the Lands falling within the S.F.Nos mentioned in the Annexure 'B' to the letter dated 05.05.2009.

The Survey Numbers also include the disputed the Government Poramboke Land[S.F.No.4/11] in the impugned order. It is contended that the letter dated 05.05.2009, addressed to the 1st respondent is still pending for consideration. During the pendency of the letter and when the same is under the consideration of the 1st respondent/State Government, the developments took place and the Sub-Collector now passed the impugned order dated 10.02.2015, directing the writ petitioner to vacate the portion of the Government Poramboke Land in their possession and enjoyment for few years. The writ petitioner sent a letter to the 3rd respondent/The District Collector on 06.06.2009, seeking permission to utilize the Government Poramboke Lands in terms of exchanging the patta lands for the Government Poramboke Lands. In other words, the writ petitioner has proposed to provide an alternate land to the Government in lieu of the Government land, which is occupied by them and under their usage. On 10.09.2009, again the petitioner has written a letter to the 1st respondent, seeking for an exchange of Government Poramboke Lands for the Patta lands owned by the Petitioner company with reference to the earlier letter sent by the petitioner dated 05.05.2009, seeking permission for the utilization of the Government Poramboke Lands. On 23.09.2009, the Deputy Secretary to Government written a letter to the District Collector, Ariyalur District, requesting the District Collector to submit a report in respect of the representation submitted by the writ petitioner dated 18.09.2009. On 06.10.2009, the 3rd respondent/District Collector addressed a letter to the 7th respondent/Chief Engineer, seeking his recommendations and approval in terms of the Government Poramboke Lands to the extent of 9.12 Acres involving water bodies and to file its report for the exchange scheme offered by the writ petitioner. Once again on 30.10.2009, the petitioner sent a letter to the 1st respondent, seeking permission for the utilization of an extent of 4.52.0 hectares, which includes the Poramboke land in S.F.No.4/11 classified as 'VettukuzhiPoromboke' for laying Railway Tracks and the petitioner is ready and willing to exchange of the Government Poramboke Land for an extent of 2.70.0 hectares. On 09.12.2009, the District Collector again sent a letter to the Assistant Commissioner, Gram Panchayat, Ariyalur to provide recommendations in the form of resolution for considering the exchange proposal of the petitioner for the exchange of Government Poramboke Lands, since the said lands are falling within the limits of Ariyalur Municipality. On 12.03.2010, the President, Parpancherry Panchayat passed a resolution, stating that the writ petitioner company shall be permitted to lay Railway Tracks in the Government Poramboke Lands. On 13.04.2010, the 7th respondent/Chief Engineer also accorded for permission for putting up Railway sidings over the Government Poramboke Lands involving water bodies without affecting the channels of

the water bodies and to follow the conditions stipulated in the said letter by the 7th respondent. On 10.07.2010, the petitioner sent a letter to the 3rd respondent/District Collector, enclosing the copy of the resolution passed by the Panchayats of Keelapazhur, Melapazhuvur & Parpanachery of Ariyalur District as per the instructions provided by the 3rd respondent/District Collector. On 19.11.2010, the 1st respondent/State Government, issued a Government Order No.603 dated 19.11.2010 for transferring 4 Acres of land out of 12 Acres in S.F.No.4/11 to the Ariyalur Municipality for the purpose of setting up Sewerage Treatment Plant(STP). Based on the said Government Order, Sewerage Treatment Plant(STP) was put up in the year 2010 in S.No.4/11. Thus, the respondents 8 to 14 have lost their rights of way as early as 2010 itself.

2.The learned Senior Counsel appearing on behalf of the writ petitioner is of an opinion that in Survey No.4/11, the Government has already constructed Sewerage Treatment Plant(STP) for the benefit of people, who were residing in and around Ariyalur Municipality and therefore, the respondents have lost their right of way in the year 2010 itself. Thus, the present claim of the respondents 8 to 14 cannot be accepted and they are intending to disturb the peaceful industrial functioning in that locality. On 06.09.2011, the 5th respondent/The Tahsildar, sent a letter to the 6th respondent/The Revenue Divisional Officer, providing recommendations, comments and directions in respect of the proposals sent by the writ petitioner for exchange of land and the particulars regarding the estimated cost of the patta lands offered by the writ petitioner in lieu of the Government Poramboke Land, which is in occupation and usage of the writ petitioner company. In October 2011, the respondents 8 to 11 & 13, filed a Civil Suit in O.S.No.298/2011 before the learned District Munsif Court, Ariyalur for declaration to declare the Easementary right of pathway to the Plaintiffs over the Suit property based on the purported title acquired by them in the year 2008. However, the writ petitioner company commenced acquisition of the Mining lands as early as 2000 and started the construction of the plant for the manufacture of cement from the year 2007 onwards. Production of commercial cements commenced in the year 2009. It is further admitted by the respondents 8 to 14 that they have no other way to reach their agricultural lands and they do not have access to their property through S.No.4/11 and the statement is contrary to the earlier claim made by these respondents before the 2nd respondent/The Sub-Collector. On 27.12.2011, the Southern Railway issued a certificate, stating that the Railway Tracks as per the design were completed by the writ petitioner including in S.No.4/11. The certificate was issued based on the inspection conducted by the authorities competent on 23.12.2011 and 24.12.2011. The District Collector, on 19.01.2012, sent a letter to the 6th respondent/The Revenue

Divisional Officer, seeking further informations/clarifications in relation to the proposed patta lands offered by the writ petitioner. On 25.01.2012, the 6th respondent/The Revenue Divisional Officer sent a letter to the writ petitioner company, seeking certain clarifications and also requested to provide 2 times of patta lands to the extent that is sought for exchange of Poramboke lands and accordingly, returned the exchange proposal of the writ petitioner. On 05.11.2013, the Tahsildar, Ariyalur, sent a letter to the petitioner seeking clarification to send the details of the earlier proposals. Once again, on 28.12.2013, the 5th respondent/The Tahsildar sent a letter to the writ petitioner, asking them to furnish all the details and particulars within a period of seven days from the date of receipt of the letter, taking note of the fact that the Railway siding has been laid over in Government Poramboke Lands. On 11.02.2014, the writ petitioner sent a letter to the 5th respondent/The Tahsildar, in compliance to his directions, furnishing all the details and copies of the relevant documents as requested and also has stated that the patta lands are offered by the writ petitioner are twice the market rate when compared to the lands of the Government. Under these circumstances, the 2nd respondent/The Sub-Collector, issued a show cause notice to the writ petitioner on 02.02.2015, stating that they have laid Railway Tracks by digging the Government Poramboke Lands for about 50 fts. in depth, which resulted in denial of right of pathway to the people of that locality to reach their agricultural lands. In view of the fact that the Sewerage Treatment Plant(STP) was constructed in S.No.4/11 based on the Government Policy, the people are unable to use that portion of the land also. Thus, they are totally prevented from reaching their agricultural land and carry out the agricultural operations. Thus, in order to provide a right of pathway to the people of that locality, who all are in possession of the agricultural lands, the writ petitioner to submit explanations. On 09.02.2015, the writ petitioner sent a detailed reply to the 2nd respondent/The Sub-Collector, stating that the petitioner has not caused any obstruction to the pathway of the complainants and the complainants at no point of time, had used the access through S.F.No.4/11. In any event, the access to the lands of the complainant remains even today from the western side of the petitioner company, which ends in Keelapazhur to Melapazhvur Village and moreover, there is no access after that since the Government has already put up Sewerage Treatment Plant(STP) blocking the entire way.

3.The learned Senior Counsel for the petitioner states that without considering the pendency of the application sent by the writ petitioner to the 1st respondent, seeking permission to utilize the Government Poramboke Lands and without considering the detailed explanations submitted by the writ petitioner to

the show cause notice, the 2nd respondent/The Sub-Collector, issued the impugned order dated 10.02.2015, directed the petitioner to remove the Railway Sidings within ten days of the receipt of the order or to temporarily arrange the pathway for the complainants through its patta lands within a period of five days.

4.The learned Senior Counsel for the petitioner is of an opinion that the orders of the superior has been violated by the 2nd respondent/The Sub-Collector. When there is a resolution by the Panchayats and such resolutions are processed for consideration to the higher authorities and the District Collector has also taken note of the representations submitted by the writ petitioners for grant of permission to utilize the Government Poramboke Lands and the representations sent by the writ petitioner is also pending consideration before the 1st respondent, the 2nd respondent/The Sub-Collector, ought not to have issued the impugned order, which shows that the 2nd respondent has exceeded his jurisdiction and not obeyed the orders of the superiors. Thus, the writ petition deserves to be allowed.

5.It is further contended that along with the show cause notice, the 2nd respondent/The Sub-Collector, has not communicated the copy of the complaint and the documents submitted, if any, by the complainants. Thus, the show cause notice was issued by way of an empty formality and the 2nd respondent/The Sub-Collector, had taken an unilateral decision without providing an opportunity by supplying the copy of the complaint and other relevant documents. When the representation sent by the writ petitioner is pending before the Government, no action can be taken by the Sub-Collector, who is an subordinate authority. A mere illegality cannot be a ground to pass such an order. Further, possessory right cannot be adjudicated by the Sub-Collector and even there is a long delay on the part of the complainants in submitting their complaints. For all these reasons, the impugned order is bad in law and is to be set aside. In this connection, the learned Senior Counsel cited the judgment of the Hon'ble Supreme Court of India in the case of Santhoshi Tel Utpadak Kendra Vs. Deputy Commissioner of Sales Tax and another, reported in (1981) 3 SCC 466, and the relevant paragraph 8 is extracted hereunder:

"8. Now it seems to us past question that when the appellate jurisdiction of superior authority is invoked against an order and that authority is seized of the case, it is inconceivable for a subordinate authority to claim to exercise jurisdiction to revise that very order. The Tribunal is the supreme appellate and revisional authority under the statute. It cannot be divested of its jurisdiction to decide on the

correctness of an order, it cannot be frustrated in the exercise of that jurisdiction, merely because a subordinate authority, the Commissioner, has also been vested with jurisdiction over that order. Unless the statute plainly provides to the contrary, that appears to us to be incontrovertible. It is not open to the Commissioner to invoke his power under clause (a) of sub-section (1) of Section 57 and summon the record of an order over which the Tribunal has already assumed appellate jurisdiction. The subordinate status of the Commissioner precludes that."

6. The learned Special Government Pleader appearing on behalf of the official respondents contested the arguments raised on behalf of the writ petitioners. The learned Special Government Pleader, at the outset, pleaded that the writ petition is not maintainable, in view of the fact that the writ petitioner is an encroacher. It is an admitted fact that even in the affidavit, that the writ petitioners have encroached the Government Poramboke Lands and even before grant of permission by the competent authorities or the Government, they have taken possession of the Government Poramboke Lands by showing their highhandedness and laid Railway Tracks without obtaining proper permission. The writ petitioners have taken the permission as granted, which shows the arrogance and highhandedness of the writ petitioners and non-adherence of the rule of law. Thus, the writ petitioners are not entitled for any relief. Usage of Government Poramboke Lands, without the permission of the Government is an offence and impermissible. The Government Poramboke Lands are meant for the public usage and for the benefit of the public at large. Any person including a company has no locus standi to encroach the Government Poramboke Land without the permission of the Government. Thus, the very admission made in the writ petition is sufficient to dismiss the writ petition on the ground that the writ petitioners are encroachers and encroachers cannot seek any relief on the ground that the application sent by the writ petitioner is pending before the Government or they have sent a proposal for exchange of patta lands.

7. Even in respect of the exchange of patta lands, there is no definite proposals submitted by the writ petitioner, which is pending. The alternate land shown by the writ petitioner is also a patta land. They have not given their title, deeds or other relevant documents in respect of such proposal of providing an alternate land in lieu of the encroachment made by them in respect of the Government Poramboke Land. Thus, the very proposal submitted by the writ petitioner for exchange of lands is an eyewash and the same has not been considered by the competent authorities.

8. In respect of the facts, the learned Special Government Pleader contended that the respondents 8, 9, 10, 13 & 14 are Kalaiselvi, W/o.Subramanian, Velusamy, S/o.Thangarasu, Vinoth Kumar, S/o.Rajendran, Saravanan, S/o.Durairaj and Lakshmi Devi, W/o.Rengasamy respectively along with Rajamani, W/o.Rasamoorthy and Ramalingam, S/o.Govinda Padayatchi have submitted petitions to the 2nd respondent/The Sub-Collector, that the writ petitioners have constructed Railway Track with 60 ft. breadth and 30 ft. depth in their Patta lands situated in Keela Palluvur Village of Ariyalur Taluk and District. The Village Administrative Officer and the Area Surveyor were examined with reference to the submissions made by the writ petitioner also. On conducting survey, the authorities came to know that the writ petitioner beyond their patta land, has encroached the Government Poramboke Land and constructed a Railway Track by digging a pit to a depth of 30ft and 60ft breadth. On account of the digging of a pit and allowing of a Railway Track, the people of that locality are unable to reach their agricultural lands, which is the only source of their livelihood and such a right of pathway is a fundamental right. Having noticed that the fundamental rights of the Citizen are violated and the people of that locality are prevented from utilizing the Government land as pathway to reach their agricultural lands, the Sub Collector has taken action. Admittedly, the land in occupation by the writ petitioner is a Government Poramboke Land. The Sub-Collector found that these complainants and other persons are still actively performing the agricultural activities in Keelapaluvur and Melapazhuvur road and the said road is also under used by the general public and other land owners. It is stated that the lands in which the Chettinad Cement Corporation Limited/the writ petitioner has formed Railway Track are classified in the Railway Revenue Records as "Vari Poramboke lands", which are prohibited water bodies by the Hon'ble Supreme Court. Some of the lands are "Pond Poramboke lands" and in the course of forming of Railway Track by digging to the depth of 30 ft, the natural water ways in these lands have been damaged, thereby hindering natural water flow leading to the curtailment of irrigation for agriculture. Furthermore, some of the lands to which exchange proposal is put forth by the company are "Cart Track Poramboke lands". Because of the encroachment by the Company, the nearby land owners have lost their usual pathway rights. Till date, no permission is granted by the Government as such sought for by the writ petitioner company for the usage of the Government Poramboke Lands. It is contended that the Parpanacherri, Keelapaluvur and Melapaluvur Panchayats have no authority to give approval for the exchange of Government Poramboke Land against the patta lands owned by the petitioner company. In fact, the Chairman, Thirumanur Panchayat Union, in his letter dated 20.03.2015, addressed the Sub-Collector,

Ariyalur, has objected to the Railway Track that has been formed. Hence, the contention of the writ petitioner in respect of the resolution passed by the Panchayats are contrary to their stand taken subsequently and impermissible. The Railway Track, which is formed by the writ petitioner company are either in Vari or Pond(Kuttai) Poramboke lands. Some of the lands to which exchange proposal is put forth by the company are "Cart Track Poramboke lands". Because of the encroachment by the company, the nearby land owners have lost their usual pathway rights. This apart, the Government also has not granted any such permission as such sought for by the writ petitioner. Thus, the very claim of the writ petitioner is unjustified and they are the chronic encroachers of the Government Poramboke Land and the respondents cannot show any leniency in respect of such encroachers. The encroachment is for personal gains and thereby creating infringement of rights to the people of that locality at large.

9.The specified Government lands sought for by the petitioner company for exchange of its patta lands are "Cart Track Poramboke lands", which are situated in S.F.No:5/1, of Keelapaluvur Village, S.F.No:25 of Keelaiyur Village and S.F.No:240 of Parpanacheri Village. In this connection, it is also submitted that since the petitioner company has encroached upon the Government Poramboke Land, the nearby land owners have lost their usual pathway. The respondents 8 to 14 had established before the Sub-Collector that they were using the pathway earmarked in S.F.No:4/11 of Keelapaluvur Village. However, after the formation of Railway Track by the petitioner company in S.F.No.4/11, their access have been totally denied. The lands, which are comprised in S.F.No:26/2, and owned by Rajamani, W/o.Rasamoorthy and Ramalingam, S/o.Govinda Padayatchi are blatantly encroached by the petitioner company and now, the above said lands are within their compound wall.

10.In view of all these reasons, the writ petitioners' are encroachers of Government land and the Government has not granted any permission and the mere pendency will not prevent the competent authorities to invoke their powers in respect of eviction of encroacher in the Government lands. The Sub-Collector is competent to pass orders in respect of eviction of encroachments. The Government has not granted permission. Thus, the original authority has got powers to pass the impugned order. Mere pendency of representation will not constitute any right or cause of action for the writ petitioner to claim that the Sub-Collector has no authority to pass an order. Such a proposition mooted out by the writ petitioners are untenable in law. Thus, the writ petitioner is to be dismissed in limini.

11. 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.

12. The Tamil Nadu Land Encroachment Act, 1905, is an Act, which provides measures for taking unauthorised occupation of land which is the property of the Government. The preamble of the Act provides 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 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.

13. 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 1993 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 16 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).

13.....

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."

14. 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."

15. 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."

16.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."

17.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 many years. Thus, the officials concerned are equally responsible.

18. This Court is able to find that the Sub-Collector, Ariyalur, who passed the impugned order alone has realized the fact and rejected the claim of the writ petitioner. Thus, the actions are to be initiated against all the officials, except the Sub-Collector, Ariyalur, who passed the impugned order in this writ petition.

19. Considering the arguments as advanced by the learned counsel for the writ petitioner as well as the learned Special Government Pleader, this Court has to consider, whether it is right on the part of the writ petitioner to encroach the Government Poramboke land and thereafter, write a letter, seeking permission to lay Railway Tracks. Whether the writ petitioner is right in continuing the industrial establishment by encroaching the Government land without even obtaining permission from the Government. This apart, the subsequent proposal to provide an alternate land for exchange is also not made clear by the writ petitioner. Contrarily, the respondents stated that the proposed alternate land suggested by the writ petitioner also belongs to the Government and it is not the land belongs to the writ petitioner. Under these circumstances, this Court has to examine whether the writ petitioner has shown their highhandedness in respect of encroaching the Government land with the hope that the Government will not raise any objection. This Court has to further examine that whether the public servants/respondents have acted prudently and diligently in maintaining the public lands meant for the welfare of the public at large. The Possibility of collusion and corrupt activities of

the Government officials are also to be examined in such nature of cases, where the petitioner like corporate sector has encroached the public lands and laid Railway Tracks by digging the water body for about 30 ft. and utilizing the same for commercial purposes, thereby depriving the people of that locality to utilize the water bodies and the public pathway. All these questions are to be addressed in such nature of cases.

20. Admittedly, the writ petitioner has encroached the land belongs to the Government. In paragraph 7 of the affidavit filed in support of the writ petition categorically states that "9.55 K.M railway path identified by the petitioner company included lands under the Government Poramboke measuring a total extent of nearly 9.12 acres". The petitioner made an application dated 05.05.2009, bearing No.549 with the 1st respondent to utilize the specified Government Poramboke land, thereby agreeing to pay the prescribed fee, if any, to the Government, of which, a copy was also sent to the 3rd and 4th respondents. Thus, it is unambiguous that the writ petitioner has encroached the land belongs to the Government without any authority. It is an admitted fact and therefore, factual presumption is to be drawn that the petitioner has usurped the powers of the State with an understanding that nobody can raise any objection in respect of such encroachments. Otherwise also, they are under the impression that no person in the Village can raise any objection in view of their strength and they are confident that they can get such permission even after encroachment. Such an attitude of the writ petitioner can never be tolerated. If the Corporate Sectors started encroaching the public lands with the fond hope that they can violate the rule of law and get permission from the Government in their own way, then the Courts cannot witness the same as mute spectator. Such an attitude of the writ petitioner is certainly unwarranted and is to be deprecated.

21. The frequent internal correspondences between the respondents are clear that they wanted to assist the writ petitioner on extraneous considerations. On a perusal of the internal communication between the respondents 3, 4, 5, 6 & 7, this Court is of a strong opinion that there is a possibility of collusion in order to help the writ petitioner one way or other. This Court cannot have any objection to help for the development of an Industry. In fact, this Court has to positively look into the industrial advancements and developments in our great Nation. However, considering the process of developing the industries and corporates, the persons, who all are desiring to commence such industrial activities, must know that they are bound by the rule of law and the norms fixed and the law in force, must be followed for the commencement of industrial activities. Such industries cannot encroach upon the Government land, which is not only a water body, but also used as a pathway

by the Villagers and the people of that locality. Thus, the collusion in this regard by the authorities are also to be investigated by the State Government. There is a possibility of corrupt activities also and the investigating authority must examine all these aspects based on the internal correspondences shared between the respondents for several years and thereby allowing the writ petitioner to enjoy the Government land for about many years. The language used in the internal correspondences are self-explanatory that the authorities have taken steps to ratify the illegality committed by the writ petitioner. It is not an irregularity, but certainly an illegality. The illegality committed by the persons cannot be condoned in a routine manner. The illegalities are to be dealt with in accordance with law. When the authorities came to understand that the writ petitioner has committed an illegality, then they are bound to initiate appropriate action under the provisions of law. Thus, all those officials, who have shared the internal communication in order to help the writ petitioner in an illegal way, must be prosecuted and suitable disciplinary actions are to be initiated by the competent authorities. Once the illegality is found, it is duty mandatory on the part of the public servants to ensure that proper actions are initiated against all such illegalities. Contrarily, they are going on writing letters and sharing informations, knowing the fact that the Government has not granted any permission or assignment in favour of the writ petitioner. When the Sub Ordinate officials have indulged in such correspondences intentionally and knowing that the Government has not granted permission, there is no reason to approve the conduct and the manner in which they dealt with the matter relating to encroachment of public lands. Thus, the conduct of the Government officials concerned in this regard are certainly reprehensible and suitable actions are certainly warranted.

22. On a perusal of the impugned order, the Sub-Collector has categorically made a finding that the writ petitioners' have encroached the Government land and laid Railway Tracks by digging in the encroached land 30 ft. depth and 60 ft. breadth. The alternate land suggested for exchange is also classified as "Cart Track Poramboke lands". Therefore, the writ petitioner has made an attempt to cheat the Government by providing another Government land as an alternate land for exchange. The attitude of the writ petitioner in this regard deserves all further actions in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905. The Sub-Collector has clearly stated that the land owners Easementary right has been encroached by the writ petitioner company, while forming the Railway Track in the Government Poramboke Lands. It is categorically established by the respondents 8 to 14 that the pattadars could not reach their land for cultivation, and could not carry the agricultural

produce as well as the implements thereby affecting their livelihood and found rights on account of the encroachment of the Government land committed by the writ petitioner company. The land encroached was classified as "Vari Poramboke lands", which all are prohibited water bodies by the Hon'ble Supreme Court. Some of the lands are "Pond Poramboke lands" and in the course of forming of Railway Track by digging to the depth of 30 ft, the natural water ways in these lands have been damaged, thereby hindering natural water flow leading to the curtailment of irrigation for agriculture. The lands to which exchange proposal is put forth by the company are "Cart Track Poramboke lands". Thus, on account of the large scale of encroachment of Government lands by the writ petitioner company, the nearby land owners have lost their usual pathway rights. The findings of the District Collector is certainly an alarming factor for this Court. The writ petitioners' have encroached the water bodies and the Apex Court and this Court has passed number of orders, stating that the water bodies are to be protected in all respects. When there is an encroachment in the water body namely "Vari Poramboke lands", "Pond Poramboke lands", this Court is unable to understand, why the official respondents have not taken any action to remove all such encroachments by following the procedures as contemplated under the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. The present Sub-Collector, who passed the impugned order has categorically stated that the writ petitioners' have encroached the public lands, which includes water bodies and "Pond Poramboke lands". Such being the factum, why the earlier officials, who had indulged in sharing internal correspondences, have not initiated proper legal action to evict the encroachers in respect of the Government lands, which all are classified as water bodies. In this regard, a detailed investigation and an enquiry is certainly warranted and all the officials, who have acted unbecoming of a public servant are to be prosecuted under the penal provisions as well as under the disciplinary laws.

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23. This being the view taken by this Court, there is no infirmity as such in respect of the impugned order passed by the 2nd respondent/The Sub-Collector, Ariyalur, in proceedings dated 10.02.2015 and accordingly, the writ petition is devoid of merits. However, taking note of the internal correspondences between the Government officials and the manner in which the Government lands including the water bodies are systematically allowed to be encroached by the corporates like the petitioner, this Court is inclined to pass the following orders.

(i) The writ petitioner, admittedly, an encroacher of the Government land, has not established even a semblance of right to grant the relief as such sought for in the present writ petition. Accordingly, the claim of the writ petitioner is rejected.

(ii) The respondents 2 and 3 are directed to evict all the encroachments of the "Government Poramboke lands", "Vari Poramboke lands", "Pond Poramboke lands" and all other public lands in that locality within a period of Two Weeks from the date of receipt of a copy of this order.

(iii) The Superintendent of Police, Ariyalur, is directed to provide necessary Police protection to the respondents 2 and 3 to evict the encroachers from the public lands in all respects.

(iv) The first respondent is directed to order for an enquiry or investigation to be conducted by an I.A.S. level officer in respect of the conduct of the officials of the District Administration and the officials of the Public Works Department in respect of their conduct, negligence, dereliction of duty, corrupt activities, illegalities and to submit a enquiry report within a period of two Months from the date of receipt of a copy of this order.

(v) On receipt of an Investigation/Enquiry report, the first respondent is directed to initiate all appropriate actions against all the public servants and all other persons concerned under the penal provisions of law and under the Discipline and Appeal Rules.

24. With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Post this matter "For Reporting Compliance" after two months. Registry is directed to communicate the copy of this order also to the Superintendent of Police, Ariyalur District.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to the Government,
Department of Revenue,
Fort St.George,
Chennai - 600 009.
- 2.The Sub-Collector,
Ariyalur, Ariyalur District.
- 3.The District Collector,
Ariyalur,
Collectorate
Ariyalur District.
- 4.The Special Commissioner & Commissioner
of Land Administration,
Chepak,
Chennai - 600 005.
- 5.The Thasildar,
Ariyalur,
Ariyalur District.
- 6.The Revenue Divisional Officer,
Ariyalur,
Ariyalur District.
- 7.The Chief Engineer,
Public Works Department,
Trichy District.
Trichy-20.
- 8.The Superintendent of Police,
Ariyalur District.

Copy to
The Section Officer,
Writ Posting, Writ Section, High Court, Madras.

+2cc to Mr.T.Balaji, Advocate Sr.55942
+1cc to M/S.S.Kamadevan, Advocate Sr.55721
+1cc to the Government Pleader Sr.56124

W.P.No.4779 of 2015

cp[co]
srg 28/08/2018