

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.01.2019

CORAM

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

W.P.Nos.3860 to 3865 of 2004
and

W.P.M.P.Nos.4543 to 4548 of 2004
and

W.M.P.Nos.27424, 24864, 26120, 29874, 25247 & 24913 of 2018

Venkatasubramani ..Petitioner in W.P.No.3860 of 2004
V.Thomas ..Petitioner in W.P.No.3861 of 2004
N.Moorthy ..Petitioner in W.P.No.3862 of 2004
B.M.Iqbal ..Petitioner in W.P.No.3863 of 2004
A.Krishnan ..Petitioner in W.P.No.3864 of 2004
B.M.Habibullah ..Petitioner in W.P.No.3865 of 2004

vs

1.District Collector,
Nilgris District,
Collectorate,
Nilgris.

2.Revenue Divisional Officer
Collectorate,
Nilgris.

3.The Tahsildar,
Coonoor,
Nilgiris.

4.Revenue Inspector,
Coonoor Town
Nilgiris.

..Respondents in all W.Ps

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the 4th respondent pertaining to the notice issued to the petitioner under Section 7 of the Land Encroachment Act, 1905 dated 03.02.2004 and quash the same as totally without jurisdiction.

For Petitioners : Mr.J.Ravindran
for M/s.A.V.Bharathi(in all W.Ps)

For Respondents : M/s.R.Janaki
Additional Government Pleader
(in all W.Ps)

C O M M O N O R D E R

The Notices issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 are under challenge in these writ petitions.

2.The writ petitions were listed for hearing on 08.01.2019. The learned counsel for the writ petitioners even before calling the matter, made an endorsement in the case bundles that "In this case nothing survives hence the petitioner may be permitted to withdraw". When the matter was called, at that point of time, the learned Additional Government Pleader raised an objection that the endorsements made by the learned counsel for the writ petitioners that "nothing survives" is incorrect. The petitioners are the encroachers and still they are continuing their business in the encroached land.

3.Hearing the submission, this Court again posted the matters on 09.01.2019 for the purpose of hearing the petitioners. On 09.01.2019, Mr.J.Ravindran, learned counsel for the writ petitioners requested for a long adjournment. This Court declined the request by stating that it is an encroachment matter and the petitioners are continuing in encroachment for the past 14 years pursuant to the interim order of this Court and the writ petitions are also of the year 2004 and pending for the past 14 years. However, in order to provide opportunity to the writ petitioners, the matter is directed to be listed for hearing on 10.01.2019 and on 11.01.2019.

The Preliminary objections raised and the findings:-

4.When the matter is taken up for hearing on 11.01.2019, the learned counsel appearing on behalf of the writ petitioner filed an additional affidavit of Mr.N.Moorthy(Writ petitioner in W.P.No.3862 of 2004). The affidavit states that the lease was granted in favour of the writ petitioners by the competent authorities and even after the lease period was over, the petitioner was regularly paying the amount and the respondents are also collecting the lease amount deposited by the writ petitioners. The petitioners have approached the respondents seeking further renewal of the lease and the request is pending with the authorities. However, no decision has been taken. It is further stated that subsequent renewal of lease during the year 2010, expired during the year 2013 and the writ petitions are filed challenging the notice under Section 7 of the Tamil Nadu

Land Encroachment Act dated 03.02.2004 and therefore, the writ petitions became infructuous.

5.The learned counsel for the writ petitioner further states that admittedly, the lease period expired during the year 2013. However, the authorities had not taken any action pursuant to the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, after the expiry of the lease period during the year 2013. For the past about 5 years, the writ petitioners are continuing only by virtue of the interim orders granted by this Court in the present writ petitions. If at all, the writ petitioners are of the opinion that the writ petitions became infructuous, they would have withdrawn the writ petitions well during the year 2013 itself. Contrarily, the petitioners have kept the writ petitions pending for the past about 14 years and now attempting to withdraw with some ill motive to continue in the premises, which is a Government land, one way or other. The learned counsel for the petitioner also made an endorsement in order to avoid the eviction proceedings, wherein the writ petitioners are continuing without any lease or permission from the competent authorities. Grant of lease in such sensitive areas by the competent authorities itself is an illegality. However, the lease was granted under forced circumstances by the competent authorities. The original notice issued during the year 1993 was challenged by the writ petitioners in number of cases. Suits were also filed and at one point of time, during the year 1998, the authorities granted lease for a period of 3 years. The petitioners had not followed the lease conditions also, and thereafter, the petitioners had prolonged the litigations one way or other and continuously in encroachment of the public land.

6.The learned counsel for the writ petitioners further states that the writ petitioners are not encroachers and they had been granted with lease, this Court is of an opinion that the initial occupation of the writ petitioners were certainly an encroachment, subsequent lease was granted from and out of the litigations. After the expiry of the lease period, the lease was not renewed nor extended. Thus, the writ petitioners are to be construed only as encroachers and they cannot be construed as lessees as the period of lease expired long back during the year 2013 itself.

7.The learned counsel for the writ petitioner cited the judgment of the Hon'ble Supreme Court of India in the case of Shaik Hussain and Sons Vs. M.G.Kannaiah reported in 1981 3 SCC 71 and the paragraph 2 is referred, which is extracted hereunder:-

"2.....It is not necessary for us to go into the merits of the case when the respondent himself did

not want to invoke the writ jurisdiction of the High Court or having invoked the same did not want to press his writ petition. For these reasons, therefore, we allow this appeal, set aside the judgment of the High Court in appeal as also that of the single Judge allowing the writ petition. The result of our order would be that the writ petition before the High Court would be treated as having been withdrawn and not pressed. The appeal is accordingly allowed but as the respondent has not appeared, there will be no order as to costs."

8.As far as the facts in the above case cited is concerned in the 1st paragraph itself, it is clarified that the petitioner had filed an application to the Court praying that he would like to withdraw the writ petition itself in order to avoid "Public inconvenience". Thus, the application was filed on August 5, 1969 and the relevant portion of the application may be extracted hereunder:-

"In order to avoid public inconvenience and with a view not to disturb the existing plying of the vehicle on the route Lingagasa mudram to Ongole, I intend to withdraw the writ petition since I ceased to have any interest in the subject-matter in issue."

9.Under these circumstances, the Hon'ble Supreme Court of India arrived a conclusion that when the writ petitioner himself filed an application to withdraw the writ petition in order to avoid public inconvenience, then the Court ought not to have gone into the merits of the case. However, the present case and the facts are entirely different. The present case is of one, where the writ petitioner for his personal gains and for unlawful enrichment, encroached upon the public land and when they came to know that the "State" has seriously taken action against the encroachers and they have attempted to withdraw the writ petitions. Under those circumstances, withdrawal can never be permitted in a routine manner.

10.It is relevant to cite ORDER XXIII Sub Clause(5) of the Code of Civil Procedure and the same reads as follows:-

"Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff"

11.With reference to the Code of Civil Procedure, the withdrawal of the suit itself is not automatic or can be construed as a right. The suit can be allowed to be withdrawn subject to certain conditions. One of the condition is that the

consent of the other party is necessary. In respect of the present writ petition on hand, the learned Additional Government Pleader raised an objection that the writ petitioners are encroachers and continuing in the Government property for years together only under the protection of the litigations and the officials have taken repeated efforts to remove the encroachments to avoid the public inconvenience in Coonoor Bus stand and in the main road. The District Administration is unable to regulate the traffic in that locality on account of such encroachments. The encroachments are causing greater nuisance and inconvenience to the public at large. This apart, the endorsement made by the learned counsel for the writ petitioners that the writ became infructuous is incorrect, so long as the petitioners are continuing as encroachers in the Government land. The writ petitions are to be decided on merits in respect of the entitlement of the writ petitioners to continue in the Government premises without any lease or permission from the competent authorities. This being the principles to be adopted, the judgments cited by the learned counsel for the petitioners are of no avail with reference to the facts and circumstances. Under these circumstances, this Court is bound to consider the writ petitions on merits and pass orders based on the legal principles settled by the Courts with reference to the statutes.

Pleadings of the writ petitioner:-

12.The learned counsel for the writ petitioners state that they are in possession and enjoyment of the lands situated in Survey No.B-59/4 in Coonoor, measuring an extent of 345 Sq.feet just opposite to the Coonoor Bus Stand. The petitioners state that they along with others were subjected to high handed action by the authorities and was forcibly evicted by the authorities from the lands in question. The earlier actions of the respondents were questioned by the writ petitioners before this Court and subsequently, the writ petitioners filed writ petitions and the writ appeals were filed. The Hon'ble Supreme Court of India granted liberty to the writ petitioners to move the Civil Court for recovery of damages against the authorities for their illegal and arbitrary actions. The appeal preferred by the "State" was also dismissed by the Hon'ble Supreme Court of India on 09.05.1994, confirming the judgment of the Hon'ble Division Bench in W.A.Nos.1420 to 1424 of 1993 and W.A.Nos.349 to 353 of 1994 dated 25.02.1994. Thereafter also, the writ petitioners filed W.P.No.10622 of 1995 seeking for protection of their rights in respect of their leasehold rights in the properties in question, enabling them to carry on their business peacefully without any hindrance.

13.The writ petitioners state that in respect of the very same Survey No.B-59/4, assignment of lands have been made in

favour of two individuals namely Tvl.N.Madulli and Na.Muthu even 25 years back and they are still running their business in their shops, which sandwiched between the shops of the petitioner and other similarly placed, who all are also now filed the writ petitions before this Hon'ble Court. The two shops of Tvl.N.Madulli and Na.Muthu are situated in between the fifth and sixth shop of the petitioners. In spite of that the authorities have favoured the said two families, who have allegiance to the ruling party, by resolution passed by the Municipality. The petitioner states that the respondents favouring few individuals based on certain political considerations and actions are initiated only against the petitioners for eviction. Subsequently, the earlier writ petitions were withdrawn by the writ petitioners on the ground that the Revenue Divisional Officer, Coonoor has given an assurance that the leasehold rights will be extended in favour of the occupants of the shops in the Road.

14.It is stated by the writ petitioners that after the withdrawal of the earlier writ petition, the Government had proceeded to pass an order in G.O.Ms.No.677, Revenue dated 13.08.1998. Accordingly, the petitioners had been granted lease in respect of various extents between 112 sq.feet to 375 sq.feet admeasuring in all 1657 sq.feet. The Government also imposed four conditions, which were to be complied with for the grant of lease in favour of the writ petitioner and others namely:-

(a) The lands can be taken over for the welfare measures of the Municipality.

(b) No permanent structure should be constructed in the land in question.

(c) The shop should not be a source of hindrance for free flow of traffic.

(d) This grant should not be treated as a precedent.

15.The petitioners further raised an allegation that the authorities had favoured Tvl.Madulli and Na.Muthu 30 years back on permanent basis and the current favour shown to the grandson of Thiru.Madulli namely Thiru Kannan, also shows about the conduct of the authorities in showing favoritism in respect of few persons on certain political considerations. The lease agreement was entered into between the first respondent and the petitioners pursuant to the Government Order No.677, Revenue dated 13.08.1998. Clause 21 of the Lease Agreement, states that the lease granted could be revoked by the District Collector, after giving one month's notice in writing by the Government or the Special Commissioner and the Commissioner of Land Administration, and without notice in an emergency and shall be terminable by the guarantee giving to the Collector one month's notice in writing also. The lease period had commenced from 13.10.1998 and expired on 12.10.2001. Even after the expiry of

the lease period, the month rents had been accepted by the respondents and the writ petitioners were also paid the monthly rent.

16.Now, the grievances of the writ petitioners are that the Court has passed an order, stating that the petitioners shall be evicted only by following the procedures as contemplated under law.

17.Under these circumstances, it is stated on behalf of the petitioners that the petitioners cannot be evicted by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905. If at all the actions are to be initiated, the same must be initiated only under the provisions of the Tamil Nadu Public Premises(Eviction of Unauthorised occupants) Act, 1975. Under these circumstances, the writ petitioners have filed the present writ petitions to set aside the notices issued by the competent authorities under Section 7 of the Tamil Nadu Land Encroachment Act, 1905.

Counter Peadings by the Respondents:-

18.The respondents contends that an extent of 0.84.80 hectares in S.No.B/59/4 of Coonoor Town of Coonoor Taluk is registered as "River" in the Revenue records. The Registry of the land itself is an objectionable one. In front of the Bus Stand, there 22 bunk shops were erected unauthorizedly on a revetment protecting the road. These encroachments caused great hindrance and several hardship for free inflow of traffic and causing inconvenience to the general public. In view of all such inconveniences and nuisances to the public at large, the encroachments were evicted on 11.04.1992. Aggrieved by this eviction, the encroachers filed in W.P.Nos.5513, 5514 to 5661/92. The Hon'ble Court ordered for restoration of shops on the ground that the authorities did not follow the procedures stipulated in the Tamil Nadu Land Encroachment Act, 1905 and the writ appeal also was dismissed and accordingly, the petitioners have again taken possession of the encroached land. The writ petition was allowed only on the premises that the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905 had not been followed. Subsequently, notices were issued under the provisions of the Tamil Nadu Land Encroachment Act, 1905 on 04.04.1995 by providing 15 days time to remove the unauthorized encroachments in the objectionable Government Poramboke land. Meanwhile, the petitioner filed a Civil Suit in the District Munsiff Court, Coonoor for the grant of an injunction on 05.04.1995 against Section 6 notices served on them. The petitioner filed writ petitions also before this Court. This Hon'ble Court in its common order dated 19.04.1995, dismissed the writ petitions and granted two weeks time for the petitioners to avail the alternate remedies. Thereafter, the

petitioners, presented appeal petition to the Sub-Collector, Coonoor on 02.05.1995. The Sub-Collector, Coonoor rejected the appeal on 03.05.1995. Thereafter the writ petitions were withdrawn by the writ petitioners pursuant to the suggestion provided by the Government. Subsequently, the Government ordered grant of lease to the petitioners on certain conditions. The period of lease also expired on 12.10.2001. On expiry of the lease, the petitioner had applied for renewal of the lease on 18.07.2001 to the Collector of Nilgiris, Udhagamandalam. The reports of the Subordinate officers had also been obtained and leased out land was inspected. It had been reported that the six writ petitioners had occupied an additional extent of 650 Sq.ft of land over and above the leased out portion of 1657 Sq.ft. unauthorizedly without any permission from the competent authorities and in contravention of the Government orders issued. The petitioner had constructed permanent structures, including the additional to extent of 157 Sq.ft and occupied by him, which is causing greater inconvenience and hindrance and hardship to free flow of traffic and nuisance to the general public. Especially, during the present days, where large number of people are utilizing the Bus Stand for the purpose of travelling. The petitioners had violated the conditions, and this apart, the lease period had expired on 12.10.2001 itself. After the expiry of the lease period and after the authorities found that the writ petitioners had further encroached the land without any permission, the eviction process was initiated and a notice was issued under the provisions of the Tamil Nadu Land Encroachment Act, 1905.

19. The counter affidavit filed by the Tahsildar, Coonoor narrates the circumstances on which, the impugned notices were issued under the provisions of the Tamil Nadu Land Encroachment Act. Though the authorities competent had initiated actions at the earliest point of time, the writ petitioners by filing cases after cases have evaded the eviction and not allowing the authorities to act in accordance with law.

20. In paragraph 21 of the counter affidavit, it is stated that the petitioners are the encroachers and in occupation of the Government land without any right and continuing in possession. This apart, the land in that locality is absolutely necessary for the expansion of the Bus Stand and free movement of traffic in that locality. In paragraph 22 also re-emphasized that the property in question is absolutely necessary for the expansion of Coonoor Bus stand. The action has been taken as per the procedures and as per the orders of the Hon'ble Court. The petitioner, who is an encroacher has to vacate the land as they have not only violated the condition laid down, but also encroached further portion of the land without any permission from the competent authorities. The population of the Coonoor

Town is increasing day-by-day and the Bus stand badly needs extension in the area. The present Bus stand was build in the year 1958 when the population was only 25000. Now, the population in Coonoor have increased manifold with similar rise in the Tourist population. Similarly, vehicles have also increased manifold without sufficient parking place. As the shop cause hindrance to free flow to traffic, action has been taken to evict all the shops, so as to ease traffic congestion. The first step in the expansion of the Bus stand is eviction of all the shops in this field would ease traffic congestion. The Hon'ble Courts have allowed the authorities to evict the encroachments by due process of law, upon hearing the Writ Petition, this Hon'ble Court passed an interim stay in W.M.P.4543/2004 in W.P.No.3860/2004, considering the facts and circumstances of this case.

Conclusion:-

21.Considering the pleadings and counter pleadings raised by the respective parties to the lis on hand, this Court is of an opinion that the public interest and the rights of all other citizen in general are infringed on account of such encroachments in the Bus stand area and as well as in the main Road of Mettupalayam-Coonoor-Udhagamandalam. As narrated in the counter affidavit, undoubtedly, the population in Coonoor have considerably increased. Apart from the permanent residents of Coonoor Municipality in flow of Tourists are also high, especially during peak seasons. Coonoor and Udhagamandalam are Tourists attraction places, wherein large number of Tourists are visiting the place. Providing adequate infrastructure Road facilities, Bus stand are the constitutional mandate of the State. In the event of allowing encroachments in such sensitive areas like Bus stand and main roads, mainly in hilly areas, it is very difficult for the commuters to use the road peacefully and the traffic in flow also would be affected.

22.It is pertinent to note that Mettupalayam-Coonoor-Udhagamandalam is the main Road to reach Udhagamandalam. Coonoor Bus stand is also situated in the sensitive area and in view of the fact that large number of people are utilizing the Bus stand for travelling and to reach their destinations, the practical difficulties of the authorities and the ground realities are well narrated in the counter affidavit. It may not be possible for the authorities to regulate the traffic in the presence of such encroachments.

23.Admittedly, the authorities competent had initiated appropriate action for eviction of all the encroachers. However, by filing cases after cases, the petitioners are adopting a tactics of prolonging the issues and to continue in the

encroached place for number of years. This Court is able to visualize that for the past more than 25 years, the encroachments are continuing only on litigations. At the first instance, the petitioners filed cases on the ground that the authorities had not followed the procedures as contemplated under law. Other cases were filed that the authorities were exceeded their limits. Further, the Civil Suits were also filed before the Civil Courts. Matters went up to the Hon'ble Supreme Court of India are took long time, the litigants are adopting the delay tactics and continuing in the encroached Government land for number of years and thereby causing greater nuisance and inconvenience to the people at large, which infringes the constitutional rights of all other citizen.

24. Few greedy men are encroaching upon the public properties for their personal gains and unlawful enrichment. Such greedy men are to be dealt in accordance with law. The authorities competent must be cautious, while initiating all such eviction proceedings and they should ensure that the procedures are followed properly. The authorities competent should not pave any way for these encroachers to develop the litigations on the ground that the procedures had not been followed. By creating all such grounds or by filing number of litigations and keep the same pending for years together, these greedy men are continuing in the encroachments for their personal gains and thereby deprive the people of this great Nation from utilizing the public properties for the welfare of the common man and more specifically, the Bus stand, Main Roads are to be kept clean and clear for the usage of public in general and all such encroachments are to be evicted without any leniency or sympathy. Even the Government must be cautious in granting lease in respect of those sensitive areas, where Bus stand are situated and on the main roads.

25. Encroachment is a social evil. Encroachments causes infringement of rights of all other citizen. Encroachment create a bad precedent in the mind of the people that no action will be taken in the event of encroaching the public land. Thus, the authorities competent must be vigilant over the public lands, water bodies and water resources. Even, in Para 3 of the counter affidavit, it is stated that "an extent of 0.84.80 Hectares in S.No.B/59/4 of Coonoor Town of Coonoor Taluk is registered as "River" in the Revenue records." One can visualize near Coonoor Bus stand, a River is flowing and in the Banks of River, the Bus stand is situated. If the encroachments are allowed in such sensitive areas, it would not only cause nuisance to the public in general, but it will hamper the further developments of the Bus stand as well as the public roads. In the event of allowing all such encroachments, the developmental activities cannot be proceeded with. There is no possibility of expansion of the road

for the usage of the public at large. In the absence of expansion of roads in that locality, it will create traffic congestion and people travelling to Udhagamandalam cannot reach their destination within a reasonable period of time. All these are causing greater and greater nuisance to the public at large. Everyone of us should be sensitive in respect of all such encroachment in main Roads and more specifically, in Bus stands.

26. On a perusal of the entire affidavits and counter affidavits, this Court is of an opinion that the actions taken by the competent authorities were being challenged by the writ petitioners on several occasions and by the litigants for personal gains in one way or other and not allowed the authorities to proceed with the eviction. Even the present writ petitions, which were filed in the year 2004, is kept pending for about 14 years. For the past 14 years, the writ petitioners are continuing in the encroached portion of the land and this Court is able to visualize during the past 14 years, in which, the writ petitions are pending before this Court, lot of activities have improved in Coonoor-Udhagamandalam area and the road usage have been increased considerably and beyond our imagination. Thus at present, the situation will be worse and any further delay would cause greater concern to the District Administration as well as to the travellers and the residents of that locality.

27. If the Officials are inactive and insensitive towards the encroachments in public lands and water bodies it would amount to infringement of the constitutional rights of other citizens, who all are residing in the nearby places from water bodies, as the same would affect the other citizens to get sufficient water. Thus, the infringement amounts to violation of constitutional rights ensured to all other citizens. It is the duty of the State to preserve the water bodies and protect ecological balances. Such being the constitutional perspectives and duty of the State, the State authorities are bound to act in respect of all such encroachments. This Court already passed an order in W.P.No.4779 of 2015 dt.13.08.2018 and the relevant paragraphs are extracted hereunder:-

"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 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 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 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).

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 about 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.

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".

28. It is needless to mention that the case of the poor landless persons are to be considered for the purpose of providing a free house site by formulating a scheme and by following the terms and conditions issued by the Government in this regard. While implementing all such welfare schemes to provide free house sites, the landless poor people, the authorities competent are to follow the uniformity and all other eligible and similarly placed persons, are to be considered for grant of such free house sites under the Government Scheme. Thus, the writ petitioner is as a matter of fact any other person in that locality is not possessing any other property or poor, then they can submit an application for the purpose of grant of free house sites under Government schemes and at the time of implementation of such schemes, the authorities competent shall consider all the cases without any discrimination and by following the procedures as contemplated. Contrarily, the people cannot be allowed to encroach upon the Government land, water bodies and water resources.

29. Thus, this Court is of an opinion that the impugned notices issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 were in accordance with law and there is no infirmity as such. However, the fact remains that the competent authorities granted lease on account of continuous litigations and by allowing the writ petitioners to withdraw the earlier writ petitions and after the expiry of the lease period during the year 2013, the lease was not renewed nor extended. Thus, a fresh action needs to be taken in respect of the encroachments based on the legal principles settled in the present writ petitions. The respondents shall not proceed with the notices issued earlier under the provisions of the Tamil Nadu Land Encroachment Act, 1905. However, it is made clear that the respondents are bound to survey the entire land and accordingly, initiate appropriate action to evict all the encroachers in that locality by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905 in order to provide free flow of traffic and infrastructure facilities of the public Bus stand at Coonoor. It is the duty of the "State" to clear the encroachments in public places and provide facilities to the public at large for free flow of traffic and Bus stand with all essential facilities and infrastructures. In this view of the matter, the following orders are passed:

(i) The relief as such sought for in the present

writ petitions stand rejected.

(ii) The District Collector, Nilgiris / 1st respondent is directed to conduct a Review Meeting with the concerned officials of all the Departments to identify all the encroachments in water bodies, water resources and Government Poramboke lands in Nilgiris District within his jurisdiction within a period of two weeks from the date of receipt of a copy of this order.

(iii) The District Collector, Nilgiris District / 1st respondent is directed to issue suitable orders / instructions / circulars to all the concerned officials to initiate immediate action to evict all such encroachers in Government Poramboke lands, water bodies, water resources within his jurisdiction by following the procedures as contemplated under the provisions of the Tamil Nadu Land Encroachment Act, 1905 or Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007, which ever is applicable.

(iv) In the event of any failure, negligence or dereliction of duty on the part of the officials concerned, then the District Collector, Nilgiris District is directed to initiate appropriate prosecution and departmental disciplinary proceedings against all such Government officials under the Discipline and Appeal Rules in force. Such a Clause must be stated in the circular / instructions to be issued by the District Collector, while directing the officials concerned to identify the encroachments in Public lands, water bodies and water resources for the purpose of eviction. It is made clear that there cannot be any leniency or misplaced sympathy in respect of the actions to be taken against all such inefficient officials and the officials, who all are committing an act of dereliction of duty.

(v) Suitable Circulars / instructions to be issued by the District Collector, Nilgiris District to all the officials concerned to protect the Government Poramboke lands, Government properties, water resources and water bodies in the manner prescribed under law.

(vi) The Superintendent of Police, Nilgiris District is directed to provide adequate protections to all the officials concerned for the purpose of initiating actions to evict the encroachers from the Government Poramboke lands, water bodies and water resources in Salem District.

30. With these directions, all the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Post this matter "for reporting compliance" on 25.02.2019.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Nilgiris District,
Collectorate,
Nilgiris.
- 2.The Revenue Divisional Officer
Collectorate,
Nilgris.
- 3.The Tahsildar,
Coonoor, Nilgiris.
- 4.The District Superintendent of Police,
Nilgiris.
5. The Revenue Inspector
Connor Town, Nilgiris

Copy to

The Section officer
Writ Section, High Court, Madras 104.

(Post this matter on 25.02.2019 for reporting compliance)

+6 Ccs to Mr.J. Ravindran, Advocate sr 3614 to 3619.

SP(22/01/2019)

W.P.Nos.3860 to 3865 of 2004

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