



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-02-2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

**WP No.30853 of 2018
And
WMP No.36004 of 2018
And
WMP No.4981 of 2019**

S.Ramamoorthi

.. Petitioner

-VS-

- 1.The Assistant Divisional Engineer (Highways) C&M,
Ambattur Division,
Avadi,
Chennai-600 054.
- 2.The Tahsildar,
Ambattur Taluk,
Chennai-600 053.



3.The District Revenue Officer,
Thiruvellore District,
O/o.The Collectorate Thiruvellore.

4.The Revenue District Officer,
Ambattur Road,
Chennai-600 101.

5.The Assistant Settlement Officer (North),
Office of the Principal Secretary and
Commissioner of Land Survey and Settlement,
Chepauk,
Chennai-600 005.

6.The Assistant Director,
Survey and Settlement,
Chepauk,
Chennai-600 005.

7.The Surveyor,
Office of the Assistant Director,
Survey and Settlement,
Chepauk,
Chennai-600 005.

8.The Special Tahsildar,
Town and Natham Nilavari Thittam,
Ambattur,
Chennai-600 053.

.. Respondents



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Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order கு,எண் 794/2018/சு2/நாள் 09.11.2018 quash the same and direct the respondents 2, 7 and 8 to conduct a joint survey of the whole Survey Field 602/7 in the presence of the petitioner, prepare the sketch clearly demarcating the portion acquired for Highways Division from the approved layout No.T.P./DTP 250 of 1967 in respect of the petitioner's plot in the said layout bearing Plot N.45B, present Door No.19/7, Red Hills Road, Ram Nagar, Ambattur in accordance with law.

For Petitioner : Mr.S.Sharath Chandran for
Mr.R.Periyakumar

For Respondents-1 to 8 : Mr.A.Selvendran,
Special Government Pleader.

For Advocate Commissioner: Mr.Rahul M.Shankhar,
Advocate Commissioner.



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ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The writ on hand has been instituted to quash the proceedings issued by the first respondent-Assistant Divisional Engineer, Highways Department, dated 09.11.2018.

2. The order impugned passed by the first respondent-Assistant Divisional Engineer, Highways Department, dated 09.11.2018 would reveal that the petitioner has encroached upon the road poramboke belonged to the Highways Department. Thus the proceedings under Section 28 of the Tamil Nadu Highways Act, 2001, was initiated.

3. The learned counsel for the petitioner would submit that the petitioner purchased the subject property by paying consideration and the Sale Deed was executed. The petitioner has got proof to establish his title over the subject property. Therefore, the order impugned is to be set aside.



4. Public property right cannot be equated with the property right of the private individuals. Thus the Legislators thought fit and enacted Special Law to deal with encroachments of public properties. As far as the Highways properties are concerned, the Authorities Competent are empowered to invoke the provisions of Tamil Nadu Highways Act, 2001, for evicting the encroachers by following the procedures as contemplated.

5. The burden of proof lies on the private person, who claims to be the owner of the property. State being the custodian of public properties, including Highways properties, the Authorities Competent are duty bound to protect the same and utilise the public properties for the public good. Thus the Authorities are expected to implement the Encroachments Laws scrupulously, since the market value of the properties across the country are skyrocketing.

6. Encroachment of public properties result in infringement of public right. State being the custodian of public properties, cannot be a mute spectator.



7. 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 vs. 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



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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 cages 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."



8. At the outset, the encroachment of public property causes, infringement of public property right and the State, being the custodian, is expected to protect the property for the purpose of utilising the same for public purposes and development activities.

9. In view of the legal principles, as stated above, the petitioner claiming title over the property necessarily has to establish the same by approaching the Competent Civil Court of Law. The grievance of the petitioner is that the impugned order was issued unilaterally and no opportunity was granted to the petitioner to submit all the relevant documents. Thus, we are inclined to convert the impugned order issued by the first respondent-Assistant Divisional Engineer, Highways Department in proceedings dated 09.11.2018 as show cause notice to the writ petitioner. The petitioner is at liberty to submit his objections along with the documents, if any, within a period of fifteen days from the date of receipt of a copy of this order. On receipt of objections, if any, from the petitioner, the first respondent-Assistant Divisional Engineer, Highways Department, shall look into the same and take a decision and thereafter evict the encroachers,



if any, identified in the Highways property. The entire exercise is directed to be completed, within a period of twelve weeks from the date of expiry of fifteen days from the date of receipt of a copy of this order.

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

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

19-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

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