

Thilagam and ors. Vs. the Assistant Divisinal Engineer

Thilagam and ors. Vs. the Assistant Divisinal Engineer

SooperKanoon Citation : sooperkanoon.com/910743

Court : Chennai

Decided On : Feb-23-2011

Judge : K.Chandru, J.

Acts : Tamil Nadu Land Encroachment Act, 1905 - Sections 6, 10

Appeal No. : W.P.Nos.9390 to 9395 of 2010 and M.P.Nos.1/2010

Appellant : Thilagam and ors.

Respondent : The Assistant Divisinal Engineer

Advocate for Def. : Mr.M.Dhandapani, Adv.

Advocate for Pet/Ap. : Mr.S.Doraisamy, Adv.

Judgement :

O R D E R

1. The petitioners herein are residents of Kamarajar Salai, Kallavi, Uthangarai Taluk, Krisnagiri District. They have come forward to challenge the order passed by the first respondent viz., The Assistant Divisional Engineer, Highways Department, Uthangarai dated 23.04.2010 and the consequential notice passed by the second respondent dated 24.04.2010.

2. In the writ petitions, on 30.04.2010, after issuing notice to the learned Government Advocate, order of Status quo was passed till 14.06.2010.

Subsequently, the writ petition was admitted on 16.07.2010 and the order of status quo was further extended for a period of four weeks.

3. On notice from this court, the first respondent has filed a counter affidavit dated 24.08.2010. On the matters being mentioned by both parties, the items were listed. With the consent of both sides, the writ petitions are taken up for final disposal.

4. Mr.S.Doraisamy, learned counsel for the petitioners contended that under the provisions of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter called as "Act"), it is only the revenue authorities, who should take action and not the officials of the Highways Department. Without prejudice to the contentions, he has submitted that the action of the respondent in issuing notice under Section 6 of the Act before issuance of notice under Section 7 of the Act is clearly impermissible and not supported by law and therefore, the notice will have to be quashed.

5. However, Mr.R.Murali, learned Government Advocate submitted that the Act viz., the Tamil Nadu Land Encroachment Act, 1905 provides for an appeal under Section 10 of the Act and for further Revision to an higher authority and therefore it is not a fit case the court can entertain the writ petition. He also submitted that the Act provides for not only the revenue authorities, but even other authorised officers to take action in respect of the Act.

6. Since the term "Authorised Officer" is not defined under the provisions of the Act and no notification authorising the first and second respondent to issue notice has been produced before this court this court is not inclined to accept the submission made by the learned Government Advocate.

7. Further on the question of issuance of notice under Section 7 at the first instance, thereafter, follow the same with Section 6 notice, the question is no longer res integra. Division Benches of this Court in more than one occasion have held that if a notice under Section 6 of the Act is not preceded by a notice under Section 7 of the Act, the proceedings initiated by the authorities will become invalid.

8. For this purpose, the following three judgments of this court can be referred to :-

a) Hamsavalli v. the Tahsildar, Vridhachalam, South Arcot District (AIR 1990 Madras 350)

b) D.Sathish v. Tahsildar, Sirkali Taluka and others (1998 (III) CTC 215) and

c) V.Arunagiri and others v. The Divisional Engineer, National Highways, Thiruvannamalai and others (1999 (I) CTC 1)

9. It is enough to refer to certain passages found in the judgment of Arunagiri's case (cited supra). The following passages found in paragraph 11 and 14 may be usefully extracted below:-

"11. The Division Bench of this Court in Hamsavalli v. The Tahsildar, Vridhachalam, AIR 1990 Mad.350 has held that issuing of prior notice under Section 7 of the Act before taking action under Section 6 of the Act is mandatory and that non-issuing of such notice under Section 7 of the Act vitiates the eviction proceedings. In the said judgment, reference is made to a decision of a learned Single Judge of the High Court in Andhra Pradesh in Abbayya v. State of Andhra Pradesh, AIR 1960 A.P.134. In the said judgment, the learned single Judge stated thus:- "It is clear from the reading of Sections 6 and 7 that the following conditions and steps of procedure have to be fulfilled and followed before a person could be legally evicted from the occupation of Government land ;

(1) first the land must be shown to be Government property in which Government have a subsisting right on the date of the proposed eviction,

(2) a notice should issue under S.7 and should be served on the person concerned to show cause before a date to be fixed why he should not be proceeded against under S.6 of the Act ; and

(3) on service of such notice and if sufficient cause is not shown, serving a notice requiring him within such time as the Collector may deem reasonable to vacate the land ; and

(4) and if such notice is not obeyed, directing removal of the person from the land ;
and

(5) if such person in occupation resists or obstructs, a summary enquiry by the Collector, shall be held and only after the Collector is satisfied that the resistance or obstruction is without any just cause, he could issue a warrant for his arrest and on his appearance commit him to close custody. Any act or attempt at summary eviction without following the procedure is totally illegal and cannot be recognised as valid. Mere service of notice periodically under S.7 is ineffective and does not give rise to a cause of action." The Division Bench of this Court agreed with the statement of the learned single Judge of the Andhra Pradesh High Court extracted above, and added that the language of Section 7 of the Act is unambiguous, when it says that before taking proceedings under Section 6 of the Act, the authority concerned shall cause to serve on the person reputed to be in unauthorised occupation of the land, being the property of Government, a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under Section 6 of the Act. The Division Bench went on to say that when a power is vested with an authority under the statute, that power must be exercised strictly in accordance with the procedure prescribed therefor, and any departure therefrom cannot be easily tolerated. The facts in these appeals are not disputed, inasmuch as the land on which the houses are built by the appellants belongs to the Government ; they are encroachers or unauthorised occupants and there is nothing to show that the provisions of the Act are not attracted to the cases on hand. *****

14.....It is open to the respondents, if they so desire, that the encroachments are to be removed in relation to the appellants, they can do so, but by following the procedure as contemplated under the provisions of the Act, in particular, Sections 7 and 6 of the Act or any other law. The houses of the appellants shall not be demolished or they shall not be evicted from the land and houses in question, without following the proper procedure as indicated above, or without adopting any appropriate course, in accordance with law....."

10. In the counter affidavit, it is submitted that lands are owned by the Highways Department but were encroached by the petitioners and therefore, they have no right to continue their possession. Since the provisions of the Tamil Nadu Land Encroachment Act, 1905 has been invoked, the petitioners are entitled to get procedural safeguards. This court in more than one occasion held that notice under Section 6 of the Act not preceded by Section 7 notice, the action initiated by the respondent is invalid. Accordingly, the impugned notices are set aside.

11. However, this court is not going into the question of whether the first respondent is authorised to pass an order under the Act since the respondent can themselves acquainted with legal issues and if they are legally authorised, they can proceed in accordance with law and any eviction of the petitioners should be done strictly in accordance with law. A Full Bench of this Court headed by Shri.P.K.Misra, J., as he then was in T.Ramaraju v. State of Tamil Nadu reported in 2005 (2) CTC 741 held that even for notice of encroachment, the authorities are bound to follow rule of law and must strictly confirm to either the provisions of the Tamil Nadu Land Encroachment Act, 1905 or the provisions of the Tamil Nadu Public Premises Act, 1975.

12. Mr.M.Dhandapani, the learned Special Government Pleader, who also incidentally present in the court brought to the notice of this Court that the land belonged to the Highways Department and that The Tamil Nadu Highways Act itself authorises Officers to evict encroachers. This court is not inclined to render anything on the issue since the impugned order did not refer to any other provision other than the Tamil Nadu Land Encroachment Act, 1905.

13. In the light of the above, all the writ petitions stand allowed to the extent indicated above. In view of the allowing the writ petitions, the miscellaneous petitions are closed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com