IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.6.2002

Coram

Hon'ble Mr.Justice S. Jagadeesan

W.P.15673 to 15686 of 2002

...

R. Anandhi .. Petitioner in WP.15673/2002

V.Lalitha .. Petitioner in WP.15674/2002

R. Kamatchi .. Petitioner in WP.15675/2002

B. Kasthuri Ammal .. Petitioner in WP.15676/2002

V.Bhuvaneshwari .. Petitioner in WP.15677/2002

A. Sumathi .. Petitioner in WP.15678/2002

S.N. Krishnan .. Petitioner in WP.15679/2002

R. Banumathi .. Petitioner in WP.15680/2002

R. Karpooravalli .. Petitioner in WP.15681/2002

B. Muthumani Ammal .. Petitioner in WP.15682/2002

K.Manjula .. Petitioner in WP.15683/2002

K. Poonusamy Chettiar .. Petitioner in WP.15684/2002

S. Amudha .. Petitioner in WP.15685/2002

C. Ganesh Ammal .. Petitioner in WP.15686/2002

all are residing at
Kamarajar Salai, Madurai.

Vs.

1.The Secretary to Government,
Public Works Department (Highways),
Fort St. George, Chennai.

2.The District Collector, Madurai.

3.The Executive Engineer,
Public Works Department (Highways),
Madurai Division, Madurai. .. Respondents in all Wps

For petitioners .. Mr.A.P. Venkataraman

For respondents .. Mr.S. Venkatesh,
Government Advocate

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Since the prayer in all the writ petitions is common and the averments made in the affidavit filed by the petitioners are also identical and the cause of action in all the writ petitions are also common and the counter affidavit filed by the respondents as well as the reply affidavit filed on behalf of the petitioners is also common, all the writ petitions are taken up with the consent of both the counsel for joint disposal.

2.The petitioners have filed these writ petitions for the issue of a writ of mandamus, forbearing the respondents, their subordinates or their agents from demolishing the petitioners' buildings, the particulars of which are given in the prayer in each writ petition, except due process of law.

3.The petitioners claimed to be the owners of the property described in the prayer in each of the writ petition respectively. It is their case that they purchased the respective property by way of registered sale deed, the particulars of which are given lower down:

W.P.Nos.	Year of purchase
15673/2002 ..	1994
15674/2002 ..	1991
15675/2002 ..	1995
15676/2002 ..	2001
15677/2002 ..	1994
15678/2002 ..	1993
15679/2002 ..	2000
15680/2002 ..	1991
15681/2002 ..	1996
15682/2002 ..	1996
15683/2002 ..	1994
15684/2002 ..	1991
15685/2002 ..	2001
15686/2002 ..	1998

4.The common case of the petitioners is that originally the property comprised in T.S.Nos.744 to 747 and 755 situated at Madurai Town belongs to Sri Gothandaramar Weaving Mills, wherein the Staff Quarters was situated. The adjacent property T.S.No.756/1 was also owned and possessed by the said Sri Gothandaramar Weaving Mills. In the year 1966 the partnership concern in respect of the said mill was dissolved and thereafter the properties of the said mill were partitioned among the partners. The property was allotted to one Mr. Krishnamachari and after his death, his son Mr.Raveen inherited the same. He alienated the property in 1983 and the subsequent purchasers formed a layout and sold the land to the petitioners in different plots. In fact the Urban Land Tax was also levied in respect of the land in T.S. Nos.744 to 747 and 755. The said lands are patta lands of Sri Gothandaramar Weaving Mills. While so, the third respondent and his

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City limit about 600 houses were already evicted between Kamarajar Bridge and LIC Bridge. The petitioners, being encroachers, are necessarily to be evicted; especially when the land is required for public purpose.

6.The petitioners also filed a reply wherein the specific plea of the petitioners is that the land under dispute are the patta lands of the petitioners situated on the edge of Block No.25. The petitioners deny the statement that the disputed land falls in Block No.19 and further stated that some of the portion of the land would fall within Block No.25. The petitioners being the purchasers, their possession cannot be disturbed without due process of law.

7.Mr.A.P. Venkataraman, the learned counsel for the petitioners contended that there is no specific denial by the respondents regarding the averments of the petitioners in their affidavit filed in support of their writ petitions that the disputed land which is under the occupation of the petitioners do not entirely fall within the government poramboke. When admittedly a portion of the land is patta land, it is for the respondents to follow due process of law before the eviction is being sought for. Wherever the land forms part of patta land, it is for the authorities to initiate proceedings under the Land Acquisition Act. The action of the respondents amounts to taking the law into their own hands and to deprive the petitioners from their property. Even assuming the said disputed land forms part of the government poramboke land, still the authorities are required to initiate proceedings either under the Tamil Nadu Land Encroachment Act or the Public Premises (Eviction of Unauthorised Occupants) Act. When admittedly the respondents did not choose to follow either of the two, the petitioners are entitled for the relief sought for in the writ petitions.

8.On the contrary, the learned Government Advocate Vehemently contended that when the lands are the government poramboke lands and the petitioners being encroachers they can be evicted; especially when the land is required for public purpose. Allowing their occupation of the encroached property would deprive the public from the benefit of the same. The 'Vaigai Modernisation Scheme' had been thought of and a Special Committee had been constituted only to prevent the occasional floods which ultimately cause damage to the property and also the lives in the residential areas. As the scheme being one of the welfare schemes, in the interest of the public at large, it is not open to any individual to stall the same by claiming any right in the poramboke land. Hence there is absolutely no merit in the writ petitions and the same are liable to be dismissed.

9.Heard both the counsel and carefully considered their contentions. Before entering into the discussion of the contentions of the respective counsel, it is worthwhile to

Vaigai Seeramaippu Thittam' petitioners property had also been included either in full or in part and consequently the petitioners are under the assumption that the disputed land is classified as 'Government Land' and the authorities are trying to dispossess the petitioners by forcibly evicting them from their occupation and also by demolishing the superstructures within the demarcated portion. The house properties of the petitioners are assessed to property tax by the Corporation authorities and further the Electricity Board also effected the electricity supply. While so, the petitioners occupation can not be an illegal or unauthorised one. The action of the respondents in interfering with the peaceful possession of the petitioners is illegal and hence the writ petitions have been filed.

5.A common counter affidavit had been filed by the third respondent, wherein it is stated that 'Vaigai Modernisation Scheme' is being executed under 'Self Sufficiency Scheme' by which the flood banks are to be formed on both sides of river Vaigai within Madurai Corporation Limits. The said flood banks will also be extended from Kamarajar Bridge to Anna Nagar Bridge which is to be utilised for diversion of traffic. The main purpose of the scheme is to preserve the river Vaigai and to prevent the same from future encroachment. Due to urbanised encroachment, the width of the river has been reduced which leads to outflanking of the river during floods, thus cause heavy damages to property and human life. The high flood discharge in river Vaigai is about 80,000 cusecs for which at least 300 meters to 350 meters of river width is essential. Now due to the encroachment, the width had been reduced to 150 meters from 225 meters which leads to obstruction of flood flows to the down stream reaches. The petitioners land is adjoining to Vaigai river bank and they also encroached the Vaigai river poramboke land in Block No.19 of Ward No.1. The Madurai Corporation Town Planning Officials had earmarked only Vaigai River Boundary which had been classified as 'Vaigai Poramboke' and some of the petitioners had encroached upon the said government poramboke land either in part or in full. Under the Vaigai Modernisation Scheme about 5.5 km length flood bank-cum-approach road had been completed in the upper reaches. The width of the river also had been increased to 30 0 meters by evicting many of the encroachers. Now the approach road work has to be started from A.V. Bridge to Anna Nagar Bridge, wherein the petitioners had encroached upon the government land, the eviction was initiated. Immediately the petitioners rushed to the court. It is further stated in the counter affidavit that nearly about 6,000 sq.ft of Vaigai river poramboke land is under the occupation of the encroachers and the said space is essential for achieving the required width of the river to prevent the outflanking of the river in the residential areas of the City. Further due to the encroachments the drinking water supply scheme which lies down stream of the Madurai City is affected. In the upper reaches of the Vaigai river in the

12.The questions arise for consideration are:
(i)Whether the writ petitions are maintainable?
(ii)Whether the petitioners are entitled for the relief sought for in these writ petitions?
MAINTAINABILITY:

13.Question No.1 : The prayer in the writ petitions is for a mandamus forbearing the respondents from demolishing the petitioners building. It will be worth to refer some of the judgments of the Apex Court as well as this court to consider this question.

14.In the case of DIRECTOR OF SETTLEMENTS, A.P. v. M.R. APPA RAO (2002 AIR SCW 1504) the Apex Court in paragraph 17 has held as follows:
"Coming to the third question, which is more important from the point of consideration of High Court's power for issuance of mandamus, it appears that the constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression 'for any other purpose.' The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, it must be exercised along recognised lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the court must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. " Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against

know something about the "Vaigai Modernisation Scheme" and the work involved thereunder. The Vaigai River Reclamation Work was decided to be executed based on G.O.Ms. No.295 Rural Development (SGSY) Department dated 8.11.2000 and in order to implement and monitor the scheme the government constituted a high level committee headed by the Hon'ble Speaker of Tamil Nadu Assembly and the Worshipful Mayor of Madurai Corporation and other district officials. The scheme is aimed to protect the river Vaigai by means of removing the encroachments, formation of flood banks and by utilising the same as road and restoring the river bed to its original condition by recreating the same. The work also started and completed to a length of two kilometers on either side of the bank.

10. The Report of the District Collector dated 3.5.2000 on which basis the said G.O was passed, reveals that the width of the river should be between 300 meters to 350 meters. But due to the encroachments to a length of seven kilometers, the width of the river is reduced to 250 meters to 300 meters. Though the actual capacity of the river being 80,000 cusecs to 1,00,000 cusecs, because of the encroachments, the river could not take an inflow of 55,000 cusecs of water. The net result is on either side of the bank, the flood water overflows and causes damage to the neighbourhoods. From 1992 to 1998 there were floods on five occasions which damaged 52,463 huts in full and 35,251 huts in part. The government was forced to pay a compensation of Rs.3.60 Crores to the affected individuals. There were 116 loss of lives for which a compensation of Rs.10.30 Lakhs was paid. There are about 18 channels joined with Vaigai river. Considering the absolute necessity for restoring the original width by widening the river bed by removing the encroachment, a proposal was made to remove the encroachments on either side of the river bed of the Vaigai river to a length of 7 kilometers.

11. After considering the report of the District Collector, the Government under G.O.Ms.No.295 Rural Development (SGSY) Department dated 8.11.2000 had sanctioned Rs.8 Crores and also sanctioned the removal of the encroachments to a length of 7.8 kilometers and further development work. Basing upon the sanction of the Vaigai Modernisation Scheme by the government, the Committee in their meeting held on 28.4.2002 passed a resolution for the removal of the encroachments. Subject No.6 refers to the removal of encroachments and it may be pertinent to note that there are 750 tiled houses, 150 asbestos roof houses constructed by Slum Clearance Board, 150 terraced buildings and 30 huts, totalling 1,080 encroachments. Resolution No.6 of the committee is to the effect that the encroachments should be removed and the encroachers will be provided alternative site at Pottappanayur Village by issue of patta and so far as the occupants of the houses of Slum Clearance Board, alternative arrangement will be made through Slum Clearance Board. As on 13.3.2002 about 606 encroachments had already been removed, of which 120 were huts, 470 were tiled houses and 16 were terraced houses. When an attempt was made for the removal of encroachments, the present writ petitions have been filed.

whom the mandamus is sought and such right must be subsisting on the date of the petition (KALYAN SINGH VRS STATE OF U.P. (AIR 1962 SC 1183)." (emphasis is mine)

15.Yet another case in AHMEDABAD MUNICIPAL CORPORATION V. NAWAB KHAN GULAB KHAN (AIR 1997 SC 152) the Apex Court has held as follows:

"The Constitution does not put an absolute embargo on the deprivation of life of personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or repassing of the pedestrians on the pavements of footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, the reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered we hold that the action taken by the appellant Corporation is not violative of principle of natural justice." (Emphasis is mine)

16.SARASWATHI v. THE TAHSILDAR, POONAMALLEE TALUK (1998 III MLJ 21) the learned Judge, after referring to various earlier judgments, has held as follows:

"In this connection, learned counsel for second respondent also brought to my notice, the order of this court in W.P.No.11378 of 1988. That is a writ petition filed by an Association, against the very same respondents. In that case, learned Judge has held that the Government has taken necessary action and the encroachers are not entitled to any remedy. It is submitted that these writ petitioners are also members of,

the said Association and since the Association failed in its attempt in the above referred writ petition. The present writ petitions have been filed, and the same should not be entertained. Learned counsel for the petitioners relied on the decision of another learned Judge of this Court in W.P.Nos.17728 to 17731 of 1997. In that case, learned Judge held that the respondents are entitled to proceed under the Land Encroachment Act, and the trespassers could be evicted. Learned counsel submitted that a similar direction could follow in this case also. It is true that the learned Judge has held that the authorities are bound to proceed under the Land Encroachment Act. But the learned Judge has not considered the circumstances under which the mandamus could be issued, and whether the wrong doer could invoke the discretionary and equitable jurisdiction of this court for the issuance of writ of mandamus.
After entering into another man's land, in this case the Government land, the trespassers themselves invoke the writ jurisdiction, and claim equity in their favour, though they have no legal right. I am only refusing the relief to the petitioners, and as held by the High Court of Calcutta, the remedy of the petitioners is the public law and not invoking Article 226 of the Constitution of India. Court refuses to exercise the discretionary remedy in favour of a wrong doer. Consequently, all these writ petitions are dismissed." (emphasis is mine)

17.In PRAMOD TIWARI v. SENIOR SUPDT. OF POLICE, KANPUR NAGAR (AIR 1999 Allahabad 289) the Division Bench has held as follows:

"The prayer of the petitioner cannot be accepted nor can a writ be issued to the respondents that the petitioner should occupy the side walk of a public road or in the alternative he may be allotted another site. On this, the law is very clear that the roads are meant for traffic only and for no other purpose, even facilities cannot be put on the road (Municipal Board, Mangalore v. Mahadeoji Maharaj (AIR 1965 sc 1147). There can be no fundamental right to carry on business on the public road (AIR 1985 SC 1206) Bombay Hawkers' Union v. Bombay Municipal Corporation. The petitioner only had a licence, at best like a hawker. The petitioner was not entitled to any particular spot on the road. (AIR 1986 SC 180) Olga Tellis v. Bombay Municipal Corporation."

18.From the above ratio decidendi, it is clear that to maintain a writ of mandamus, it is obligatory on the part of the petitioners to establish that they have a legal right and their legal right is being offended by the action of the authorities or the authorities have no jurisdiction to initiate such action.

19.In these cases, from the facts extracted earlier, it is clear that the petitioners claimed title over the disputed properties; whereas the respondents' claim is that the disputed land is river poramboke and the petitioners had encroached upon the same. In paragraph 2 of the affidavit the petitioners claimed that they are in possession of T.S.No.756/1. Their own averments is to the effect that the compound wall covers T.S.No.744 to 747 and 755. In paragraph

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4 of the affidavit it is more clearly stated that the Urban Land Tax was levied only in respect of T.S.No.748 to 749, which make clear that T.S. No.756 is not the subject matter of the Urban Land Tax as well as it falls within the compound. Hence so far as T.S.No.756 is concerned, it cannot be said that the same is the patta land of the said mill and by virtue of the purchase the petitioners are entitled to claim title. Consequently the petitioners do not have undisputed title over the disputed property and further there is nothing on record except the sale deed in their favour to establish their title. In the absence of any title as held by the Apex Court as well as this court and Allahabad High Court, the petitioners have no legal right to be safeguarded by issue of a writ of mandamus. Hence this court is of the view that the writ petitions are not maintainable.

20.So far as the contention of the learned counsel for the petitioners that the petitioners have purchased the land and are in continuous possession, obviously the sale deed alone may not confer any title on the petitioners, unless it is established that their predecessor has got a valid title to be part with. Admittedly in all the cases the petitioners did not produce any patta to establish their possession in respect of any period earlier to the filing of the writ petition. Their reliance is only on the property tax levied by the Corporation and the electricity connection. When admittedly the construction was unauthorised one, in the absence of any sanctioned plan by the authorities, the assessment of property tax cannot estop the respondents from evicting the petitioners when their possession is that of the encroachers.

21.A Division Bench of this court in the case of SEKHAR v. MALLIGARJUNA RAO (2000) 3 MLJ 123) in unequivocal terms has held as follows:

"The only question before us is, as to whether these appellants can challenge the order of the learned single Judge on the ground that they are in possession of the property for the last 40 years and they have not been heard. The learned counsel for the appellants has not been able to show that the appellants have any legal right except that they are in possession of the property for some years, that too, without disclosing the exact date of occupation and its continuation. In our considered opinion, mere possession on the public land will not give any right to the appellants to get any indulgence from this court, when admittedly, the disputed land is a public land."

The Division Bench further held as follows:

"On overall consideration, we are of the firm view that the wrong doers cannot seek indulgence, nor this court will issue direction to perpetuate the illegality in exercising the power under Article 226 of the Constitution. In view of what we have discussed above, the direction issued to provide alternative site will not come in the way of the corporation in removing the encroachments and the corporation is free to remove them."

Hence it is clear that the mere long possession, even assuming, had been established that will not confer any right for the petitioners to claim any redressal against the government; especially when their own action is illegal and unlawful.

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22.In Adayar Padmanabha Nagar Seva Sangam rep. by its Secretary v. Corporation of Chennai rep. by its Commissioner (2001 Writ L.R.523) this court has held, after referring to various judgments as follows:

"Hence, on an analysis, I am of the view that the relief asked for by the petitioners cannot be granted. Article 226 cannot be applied to the circumstances of the case on hand. Trespassers and encroachers cannot perpetuate their action by resorting to Article 226."

23.As stated already, when the petitioners themselves have mentioned that the disputed survey number do not fall within the compound wall of the mill i.e., the patta land and the same is not the subject matter of the Urban Land Tax also, there is no dispute that the property is the government poramboke land and as such the authorities are entitled to proceed with the eviction. Hence a writ of mandamus directing the authorities not to proceed with their legal duties cannot be issued.

24.Question No.2: So far as the second question as to whether the petitioners are entitled for the relief is concerned, as held by the Division Bench of this court in SEKHAR v. MALLIGARJUNA RAO (2000) 3 MLJ 123) a wrong doer cannot be permitted to invoke Article 226 of the Constitution of India. The same principle has been laid in yet another case of AATHI v. CHAIRMAN, TAMIL NADU HOUSING BOARD (2000(3) LW 531) in the following words:
"The petitioner having admitted that he is an encroacher on the public property, the authorities having requested the petitioner to vacate the same on the ground that the place is required for public purpose, the petitioner is bound to vacate the same and hand over possession. Being an encroacher, the petitioner has no right to continue to be in possession."

25.A Division Bench of this court has held in TIRUCHIRAPALI PALPORUL VIRKUM THOZHILALAR SANGAM v. COMMISSIONER, CORPORATION OF TRICHY (1998 II CTC 610) that the writ jurisdiction is not meant to create a right in property but is meant to protect existing rights. Hence in order to claim any relief, it is for the petitioners to establish their right for such relief.

26.It may be worth to mention the judgment in ARUNACHALAM v. AVADI MUNICIPALITY (1998 II CTC 762) where it is held that the writ of mandamus can be issued to the authorities to discharge their official duties and not to prevent the officials from discharging their legal obligations.

27.Yet another Division Bench of this court in DHARMAPURI TOWN SENGODIPURAM RESIDENTS WELFARE ASSOCIATION v. GOVERNMENT OF TAMIL NADU (AIR 2001 Madras 307) held as follows:
"Lastly, when it was found by the learned single Judge that at least the members of the appellant association who went to the civil court (for at least one of them) had purchased the occupancy rights from the original encroachers. A fresh claim

came to be made that all the civil suits were to alike. The situation was tried to be improved by suggesting before us that the learned single Judge had relied upon only one of the plaints. It is pointed out by the respondents that the said plaint was filed by the petitioners alone. Under such circumstances, it is very difficult to accept the claim of the petitioners that they are in any way "destitute" so that before they are evicted, the alternate arrangement should be made. We do not wish to dilate on the Supreme Court judgments for they are very clear. The law regarding Article 21 of the Constitution of India also is now well settled. Any person cannot simply run to the Court and claim any unfair advantage', crying that he is a 'destitute'. There can be no difficulty in appreciating that ours being a 'welfare State; must help the poor and destitute but; we are not prepared to believe that where the factual claim of poverty itself is on the brittle ground, still such help should be made available. The contention is therefore, rejected."
(Emphasis is mine)

This is also a case where the purchase has been made by the petitioners from the previous occupants. It was held that the purchase is only the occupancy right and the petitioners cannot derive any title in respect of the disputed property; especially when their predecessors do not get a valid title. If the case on hand is considered on the basis of the principles laid down by various courts, this court is of the view that the petitioners are not entitled for any relief.

28.Yet another contention of the learned counsel for the petitioners is that the petitioners were not issued any notice either under the Tamil Nadu Land Encroachment Act or the Public Premises (Eviction of Unauthorised Occupants) Act. From the Report of the Collector and the resolution of the committee of the Vaigai Modernisation Scheme, it is clear that the land under dispute is the government land, especially classified as 'river poramboke'. Now the reclamation work is being carried out in the public interest to avoid any loss or damage to the neighbouring places in view of the floods or the water from the river overflowing. The encroachment to a distance of two kilometers had admittedly been removed and the process of the removal of encroachment by the petitioners is only a continuity and not a newly commenced one. In such cases, the petitioners might be knowing about the fact that the encroachment or the unauthorised occupation are being removed by the authorities. Even if a request is made to the petitioners to remove the unauthorised encroachment that is more than enough and there is absolutely no need to issue any special notice under any of the enactment. This court has held so in NARAYANASAMY v. COMMISSIONER, AMBATTUR MUNICIPALITY (AIR 1998 Madras 119) in the following terms:
"Admittedly, the petitioners are encroachers and they are occupying the public space without any authorisation from the respondents. It is not denied that such encroachments are hindrance to the public for their free movement and also for traffic. Moreover, according to the petitioners, the officials have informed the petitioners to remove the encroachments on 6.2.1983 and 8.2.1993. It is specific case of the first respondent that the announcement was made through

loud speaker to remove the encroachments. The learned Judge placed reliance on the judgment of the Apex Court in the decision reported in AIR 1997 SC 152 Ahmedabad Municipal Corpn. v. Nawab Khan Gulab Khan, where the learned Judges held as follows:

"None has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tardious and time consuming process leading to putting a premium for highhanded and unauthorised acts of encroachment and unlawful squatting. ... Thus considered, we hold that the action taken by the appellantCorporation is not violative of the principles of natural justice."

So, the petitioners cannot occupy the public space by way of right as they are only encroachers. The encroachments should be removed for the benefit of the public. The petitioners cannot resist the same on the ground that notice was not given. It is well settled that no person has a right to encroach on foot path, pavement or public place. In view of the above, the writ petition deserves to be dismissed."

29.It may not be out of place to refer certain facts pertaining to the conduct of the officials in allowing the encroachment in various parts of the government land or the lands owned by the local authorities. In the cases on hand, the scheme provides for an estimated expense of Rs.11.61 Lakhs for the removal of the encroachments on either side of the river bed. If the authorities had taken care of the government lands in a proper manner on the principle of 'nip in the bud' whether it is necessary at this stage for the State to incur such a huge expense for the removal of the encroachment alone, apart from the rehabilitation by providing alternative site etc. . At least the expenses for rehabilitation can be appreciated but not the expense for removal of encroachment.

30.In fact I had an occasion to deal with such a situation and made an observation in the case of ARUNACHALAM v. AVADI MUNICIPALITY (1998 II CTC 762) as follows:

"Before I part with the case, I have to observe that nowadays, most of the cases are being filed for a mandamus directing the respondents not to interfere with the possession of the encroachers and similar writ petitions are also filed by the persons aggrieved by such encroachments seeking for a writ of mandamus directing the authorities to remove the encroachment. The nature of the litigation clearly reveals that the executive is not taking immediate steps to prevent the encroachment or at least immediately to remove such encroachments as soon as the same is spotted out. It is not known as to why the revenue authorities are encouraging this sort of encroachments and thereby increasing the litigations before the Court. If the revenue authorities are instructed to keep vigil over the Government property in order to prevent any encroachment or unauthorised construction or occupation, it may not only save the Government property, but also prevent unnecessary increase of litigations before the Court. The Government undertakings like Electricity Board and the Local Bodies should also be restrained from giving electricity

supply and other facilities, unless they are satisfied with the ownership of the land and the building, if any building is constructed in the Government property whether it is a poramboke land or otherwise. Without the consent of Government authorities, the Government Undertaking should not freely extend their helping hand to give the amenities for the properties, which have been constructed by way of encroachment. This may lead to various inferences in respect of conduct of the authorities, which ultimately affect the reputation of the officers in discharging their statutory functions. The Government is directed to issue necessary directions to the head of the districts in these lines so that at least in future, this sort of dual litigation can be prevented."

31. Though nearly four years had lapsed, but still the system never changed. There is no point for the Executive to wake up suddenly to seek the removal of the encroachments over night. The Executive must aware that it is only because of their inaction or closed eyes for such illegal action of the unauthorised occupation, the law breakers are emboldened to come to court for some redressal or other. When the direction is issued by the courts for the removal of such encroachment, it is not the intention of the courts to transgress the jurisdiction of the Executive. Whenever the Executive failed to take care of the public property for the public interest or failed to take care of the public interest at large, the courts have necessarily to intervene. To mention a few, the Judgment of the Supreme Court for the removal of abnoxious industry from the residential area, the directions for the closure of certain abnoxious and hozardous industry, the directions for closure of slaughter houses and its relocation, the various directions issued for the protection of the ridges area in Delhi, the directions for setting up of effluent treatment plants to the industries located in Delhi, the directions to the tannery etc and the latest compulsion for the Transport Corporation at Delhi to use the liquid gas instead of diesel are all judgments which seeks to protect the environment. Equally here the interference with the river bed would certainly amount to the interference in the environment.

32. In fact in the recent judgment of the Apex Court in HINCH LAL TIWARI v. KAMALA DEVI (2001 AIR SCW 2865) the learned Judges had directed that the dry tanks should not be permitted to be plotted out and allotted in the following terms:

"It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e., respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better

environment for the benefit of public at large. Such vigi
the best protection against knavish attempts to seek allot
in non-abadisites. ....
The State including respondents 11 to 13 shall restore
pond, develop and maintain the same as a recreational s
which will undoubtedly be in the best interest of
villagers. Further it will also help in maintain
ecological balance and protecting environment in regard
which this court has repeatedly expressed its concern. Su
measures must begun at the grass root level if they were
become the nation's pride."

33.It is not only obligatory on the part of the Executive no
to permit any encroachment and in case of encroachment th
same should be removed at the initial stage and also must kee
a vigil to protect the land from such recurrences of th
encroachments.

34.The newspapers very often write Articles to bring to the
notice of the authorities regarding the unauthorised
encroachments which cause public nuisance. It may not be out
of place to refer a portion of the Article under the caption
"Are the bottlenecks to blame? - published in 'The Hindu' Ú
Metro Plus - edition dated 28th May, 2002 which reads as
follows:

"But, pockets of tenacious occupants remain; off G.N.Chetty
Road; Canal Bank Road near Adyar; the Buckingham Canal's
elsewhere; the Otteri canal bank; Mylapore and other locations
spread all over and sprouting faster than they can be
removed."
This shows that the encroachments are spreading over faster
than the removal which should be viewed with some seriousness
by the Executive. If timely action had been taken, it will
not be a burden for the Executive either in the removal of the
encroachments or in the preservation of the public property
for the public welfare scheme. This can also avoid the
unnecessary expenses for evicting the encroachers by the
State.

35.The above referred newspaper report is really a shocking
one; especially when this court has issued repeatedly so many
directions in several writ petitions to the authorities,
directing them to remove the encroachments. Even though the
authorities filed the reports stating that the encroachments
have been removed, the above newspaper report would clearly
reveal that such reports of the officials are either to
satisfy the court or just to make belief of compliance of the
orders of this court. Even assuming the said reports are true
to the fact of compliance, still it remains that the
authorities have failed to keep a vigil over the same by
preventing fresh encroachments or the recurrences. Whenever
the directions or guidelines are issued to the authorities by
the courts, they are to be followed and carried out but cannot
be ignored. It seems the authorities have never cared to

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carry out the directions or follow the guidelines. Even assuming the same had been done, the authorities are of the view that by filing the report in the court about the compliance of the direction, their job is over and the encroachers are at full liberty to reoccupy the same immediately thereafter. This attitude of the authorities must be taken serious note of by the government for suitable action.

36. Inspite of several orders of this court, still the mushroom growth of the encroachment or recurrences in many parts of the City is not totally prevented. Even after the newspaper report, the government seems to be silent over the issue for the reasons well known for them. The newspaper report refers only a very few. I personally aware about the recurrences of the encroachments in several areas of T.Nagar and few places of Mount Road, the entire place of the market area and Karaneeswarar Koil Street of Saidapet. In Tambaram area, which is being a Highway, the encroachments have been removed; but still few recurrences are there and the authorities have totally neglected to take care of the free flow of traffic in the national highway. It is not known as to how they are so ignorant of the hardship of the vehicles passing through. It is hightime that the Government should appoint a committee at the Secretariat level along with some elected local body members and local officials, making them responsible for these illegal occupations. Unless the Executive and the elected members are made liable, this cannot be eradicated, as they are mutually blaming each other for such recurrences of encroachments. Whenever any order is passed by the courts, the Government should have a follow up machinery not only to comply with the same but also to prevent the recurrences of the same mistake once again which can prevent the unnecessary work load of the courts. Unless this is done, day in and day out, the courts are bound to hear the words of recurrences from the officials, as if they are not responsible for preventing such recurrences of encroachments.

37. As held by the Division Bench of this court in SHOBANA RAMASUBRAMANNYAM v. THE MEMBER SECRETARY, CMDA (2002 I CTC 449) when the public interest viz-a-viz individual interest comes in question, the public interest will prevail over individual interest, since individual interest is subservient to public interest.

38. In the case on hand, the removal of encroachment is to widen the river bed of the Vaigai river which by itself is in the public interest and the added public interest is to prevent the damage to the neighbouring low lying areas due to the overflowing of the river water because of the obstructions caused by the encroachments. When that be so, the individual right of the petitioners which is subservient to the larger interest of the public should be negatived. These cases must be taken as a lesson by the Executive for their future action

in protecting the government properties and without making the government liable to make budgetary provision for the removal of the encroachments.

39.For all the reasons stated above, this court do not find any merit in these writ petitions and accordingly they are dismissed. Consequently connected pending WMPs are closed.

MADRAS HIGH COURT 24 JUN 2002

Sd/-
Assistant Registrar

True Copy /

12.6.02
Sub. Assistant Registrar

To

1.The Secretary to Government,
Public Works Department (Highways),
Fort St. George, Chennai.

2.The District Collector,Madurai.

3.The Executive Engineer,
Public Works Department (Highways),
Madurai Division, Madurai.

one cc to Mr A.P.Venkatraman,SR No.27120.

NB

W.P.No.15673 to 15686/2002.