

K. Chandru

Vs

State of Tamil Nadu and Others

and

G. Kannan and Others

Vs

State of Tamil Nadu and Others

Writ Petitions Nos. 8927 and 9380 of 1981

(CJI Y.V. Chandrachud, Syed M. Fazal Ali, V.D. Tulzapurkar, A. Varadarajan, D. Chinnappa Reddy JJ)

10.07.1985

JUDGMENT

Y. V. CHANDRACHUD, C.J. -

1. By these two writ petitions, the petitioners ask for a writ of mandamus restraining the respondents from evicting the slum dwellers and pavement dwellers in the city of the Madras, without providing alternative accommodation to them. They also pray that the respondents should provide basic amenities like water, drainage and electricity to the slum dwellers.

2. The State of Tamil Nadu enacted the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 in order to eradicate slums which are likely to become a source of the danger to public health or sanitation. It is alleged by the petitioner of that, acting in pursuance of the provisions of the said Act, about 450 huts situated on the Canal Bank Road adjoining the Loyola College were demolished on November 17, 1981. On the following day, the Chief Minister of Tamil Nadu made a statement that the Government had decided to the demolish slums which had come into existence after June 1977. On the November 19, 1981 the Chairman of the Tamil Nadu Slum Clearance Board made a statement that alternative accommodation had been provided to person who were evicted from the slums Situated on the Canal Bank Road.

3. The Tamil Nadu Land Encroachment Act, 1905 provides by Section 2 that all public roads, streets, lanes, paths, etc., are the property of the State Government. The Madras City Municipal (Corporation) Act, 1919 contains provisions in Section 220-222 regarding encroachments on public streets. The Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971 was passed in order to make provision for the improvement and clearance of slums in the State. Section 3 of the Act contains provisions for the declaration of an areas as a slum areas if, inter alia, such area is or may be a source of danger to the health or safety of the public by reason of the area being low-lying insanitary, squalid or overcrowded. Section 5 of that Act empowers the prescribed authority to direct that the no person shall erect and building in a slum area without it previous permission in

writing. Chapter IV of the Act contains various provisions for the improvement of slum areas. Section 11(1) provides that if the Government is satisfied that the most satisfactory method of dealing with the conditions in a slum area is the clearance of such area and demolition of all the buildings therein, it may by a notification declare the area to be a slum clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of the Act. The proviso to that section, which is important, requires that before the issuing such notification, the Government shall call upon the owners of lands and buildings in such slum areas, to show cause why such a declaration should not be made and that, after considering the cause, if any shown by such owners, the Government may pass such orders as it may deem fit. Section 29 of the Act provides that notwithstanding anything contained in any other law for the time being in force no person shall except with the previous permission in writing of the prescribed authority, institute any suit or proceedings for obtaining a decree or order of eviction of the occupant of any building or land in a slum area, or execute such decree or order if it is already obtained. Chapter VIII of the Act deals with the constitution of the Slum Clearance Board and its powers. Lastly, the Tamil Nadu Town and Country Planning Act, 1971 contains provisions for the constitution of regional planning authorities, local planning authorities and the new town development authorities. Under Section 17 of that Act, the local planning authority is under an obligation to prepare a 'master plan' for the local planning area providing inter alia, for the manner in which the land in the planning area shall be used.

4. The Report prepared by Shri Badrinath, the Collector of Madras, which is called the "Urban Development of Greater Madras Report", shows that 43 per cent of the population of Madras lives in slums, apart from those who live on pavements; that increasing industrialisation of the city has led to the proliferation of slums and that the Government and the private sector shall have to work in collaboration if any appreciable improvement of the slums has to be brought about. The "Socio-Economic Survey of Madras Slums" by Shri R. Arangannal, Chairman of the Tamil Nadu Slum Clearance Board, contains significant data regarding the condition of slums in Tamil Nadu. It is heartening to find that the Report contains a statement that "the Tamil Nadu Government realised that the feeble, halting incomplete and disconcerted measures of the past have to give place to a comprehensive integrated and concerted policy to be put though on an emergency footing," and that, "the slum dwellers are an essential element in city life who are as necessary as any other section of the population for the life of the city." The Survey Report shows that out of 1202 slums, 454 are situated in the north of Madras and 748 in the south, about 6% of the total area of the land in Madras being occupied by slums. According to the Survey Report, through Madras is called the "City Beautiful" there are 1202 "ugly spots" in the city, which hold one-third of the city's population which leads a miserable and unhygienic life, devoid of basic amenities and elementary requirements of the civilised existence. The Report concludes by saying that "The motto of slum clearance is : God revealeth in the smile of the poor."

5. The "Structure Plan for Madras Metropolitan Area" drawn by the Madras Metropolitan Development Authority, says that despite the efforts to reduce the emergence of slums, 3025 huts came into existence every year between 1971 and 1978, showing an increase of 3.34% per annum. The Structure Plan shows that the Slum Clearance Board, since its establishment in 1971, had undertaken a programme of investment, which had reached the figures of Rs. 34.06 cores by 1979. In addition to the clearance of certain slums through transfer of their occupants to tenement buildings, the Board undertook the improvement of slums under the Environmental Improvement Schemes (EIS) and the Accelerated Slum Development Schemes (ASDS). The Slum Clearances Board was designated as the implementing agency by the World Bank. The current programme which is undertaken by the Board for the improvement of slums, is an admirable step which shows a realistic awareness of an urgent social problem. Under the world Bank programme of slum

improvement, 30,000 house holder benefited during the period 1977 to 1980 and nearly 50,000 slum dwellers benefited the during the course of the next four years. The accent of the Tamil Nadu Government is on the improvement of slums rather than on their clearance. Paragraph 10.45 of the Structure Plan says that arrangements are proposed to be made to transfer 'patta' (security of tenure) rights to those slums which are situated on public lands and which are selected for upgrading. Since slums which are situated on the river banks and in narrow inaccessible areas cannot be improved they are proposed to be removed. The families affected by such removal will be offered alternative tenements, sites, or service plots.

6. On behalf of the State of Tamil Nadu, the Madras Metropolitan Development Authority and the Commissioner of Police Madras, a Counter-affidavit has been filed by Shri C. Ramchandran, Commissioner and Secretary to the Government, Housing and Urban Development Department. The statement contained in that affidavit may be summed up thus : The allegation that 450 slums were demolished without offering alternative accommodation to person affected thereby, is untrue. The policy of the State Government is to improve the living conditions in the slum areas and to provide sanitation, drainage, water supply, schools, health care, etc., to the slum dwellers, The State Government spends over three crores of rupees every year for construction of tenements for slums dwellers. Alternative accommodation for the 438 families of Pushpa Nagar was ready for being offered to displaced slum dwellers. Finding that the Pushpa Nagar slum dwellers were being given alternative accommodation, certain other persons trespassed upon that land and it is only they who were denied alternative accommodation. The reason for fixing a new date-line for enumeration of slum dwellers was that several representations were received by the Government that the earlier date, January 1, 1974, resulted in the elimination of the many persons who, because of the floods of 1977, had lost documentary evidence showing that they were in occupation of the slums prior to 1974. That date was therefore extended by the Government, after consulting all political parties, until June 30, 1977.

7. A counter-affidavit has also been filed by Shri T. K. Kapali, Chairman of the Tamil Nadu Slum Clearance Board. The statements in that affidavit may be summed up thus : The rehabilitation of the slum dwellers, which is a colossal task, has not been undertaken by any other Government on the same scale as is done by the Government of Tamil Nadu. In fact several other States in India had sent their representatives to Tamil Nadu to study the working of its Slum Clearance Board. The Board had so far built 38,000 tenements for slum dwellers. A sum of rupees thirty-five crores was spent for constructing these tenements and a sum of five to six crores is spent every year for that purpose. Though the cost of a tenement given to a slum dweller comes to about Rs. 16,000, for which the fair rent would be Rs. 105 per month, the Board was charging a licence fee of Rs. 20 per month only to them. 95,414 Families had benefited on account of the facilities provided under the Environmental Improvement Scheme and 75,000 additional families were being provided amenities under the World Bank Project. A sum of Rs. 19 corers was proposed to be spent during the next four years for improving the living conditions of the slum dwellers. Under that scheme, lands on which huts been constructed are allotted to the hut dwellers on hire-purchase basis. Home Improvement loans ranging from Rs. 1500 to Rs. 3500 were given to person belonging to the lower income group and outright grants were made to persons who were in the lowest category. Cottage industries and schools were constructed in the slum areas and a number of income supplementation projects were started in order to provide means of livelihood to the slum dwellers. Alternative accommodation is always provided before the slums are removed. The hutments near the Loyola College consisted of two categories, one of which was Pushpa Nagar, which was a notified slum. That slum was vacated for the purpose of construction of a multi-storeyed building at a cost of Rs. 47.79 lacs for sole purpose of housing the slum dwellers of Pushpa Nagar. The other category, which formed a small

minority, was from Choolaimdu who encroached upon public properties after finding that the Pushpa Nagar hutment dwellers were being provided alternative accommodation. These persons had their own huts or residence elsewhere.

8. The petitioners have filed rejoinder to the counter-affidavits but, except for denying the statements in the counter-affidavits, the rejoinders do not contain anything to which reference need be made.

9. We are satisfied on a careful consideration of the statements contained in the counter-affidavits filed on behalf of the respondents, that the Government of Tamil Nadu has adopted a benevolent and sympathetic policy in regard to the slum dwellers. Steps are being taken for the purpose of improving the slums and wherever they cannot be improved, alternative accommodation is provided to the slum dwellers, before they are evicted. In view of this position, we do not consider it necessary to issue any writ or direction to the Government of Tamil Nadu. We will only express our confidence that the Government will continue to evince the same dynamic interest in the welfare of the pavement dwellers and slum dwellers. We may remind the Government, if at all, of what the Collector of Madras Shri Badrinath, has stated in his Report : "The motto of slum clearance is : God revealeth in the smile of the poor". Let the poor smile for a while.

10. Since Madras has a late monsoon, we direct that the pavement dwellers in the city will not be evicted before December 31, 1985. The State Government will do its best to provide alternative accommodation to those amongst them who are able to show that they were living on pavements before June 30, 1977. Insofar as the slum dwellers are concerned, the counter-affidavits filed on behalf of the respondents contain an assurance that it is the policy of the State Government not to evict such of them, as were living in the slum prior to June 30, 1977, without providing alternative accommodation to them. That assurance will bind the Government. Insofar as the other slum dwellers are concerned, they too will not be evicted before December 31, 1985 unless the land on which any slum stands is required by the State Government for an urgent public purpose. In the event that it becomes necessary to evict any of the slum dwellers belonging to this category prior to December 31, 1985, the State Government will have liberty to apply to this Court.

11. Our decision of the constitutional points in the cases of the Bombay Pavement and Slum Dwellers will govern these writ petitions also.

12. The writ petitions will stand disposed of with the observations and directions given above. There will be no order as to costs.

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