

**HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
HON'BLE SRI JUSTICE SANJAY KUMAR**

W.A.No.2012 of 2013

Date: 31.12.2013

Between:

T.V.Subba Rao

.....Appellant

AND

The Estate Officer, represented by Deputy
Chief Personal Manager, Industrial Relations
and Welfare, Hyderabad and others

...Respondents

**HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
HON'BLE SRI JUSTICE SANJAY KUMAR**

W.A.No.2012 of 2013

JUDGMENT: (per Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred against the judgment and order of the learned single Judge dated 31.10.2013, by which the writ petition has been dismissed.

The brief fact relevant to the writ petition as well as preferring the appeal is set out hereunder:

The writ petitioner is residing in premises bearing No.3-6-186, Hyderguda, Hyderabad, for more than 30 years. He came into possession not as an owner thereof. He was a tenant to one Sri Sriram Bhagwan Das, who alleged to have orally gifted the said property to the petitioner and four others, as they have rendered services to him. There are income tax dues as against the aforesaid Sri Sriram Bhagwan Das and in order to recover the same, the Income Tax authorities held public auction and that the property was sold on 22.09.1971. Even after sale, the writ petitioner and four others were residing in the said premises. Thereafter, respondent No.2 issued a notice on 10.06.1986 terminating the tenancy and demanding arrears of rent and delivery of possession by 31.07.1986. As sale has been confirmed, respondent No.2 became the owner of the property and thus at the most, the writ petitioner became the tenant under respondent No.2. As the writ petitioner did not vacate the premises, respondent No.2 filed a civil suit being O.S.No.2720 of 1987 and the same was decreed on 09.04.1991 and that the appeal preferred by the writ petitioner against the said judgment was allowed on 11.08.1994. Thereafter,

the petitioner filed a suit being O.S.No.1032 of 1995 for perpetual injunction against respondent No.2 and the said suit was decreed on 05.02.1998 and the decree was also confirmed by the appellate Court and, therefore, the said decree and judgment has become final. Thereafter, proceedings were initiated under Section 4 (1) of the Andhra Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1968. Before the Estate Officer (Respondent No.1), it was contended that the writ petitioner has perfected his title by adverse possession and as such the writ petitioner is not an unauthorized occupant. Thereafter, the Estate Officer passed orders declaring the petitioner as an unauthorized occupant of the subject property and ordered eviction from the property.

In this context, the learned single Judge held that when it was found on fact that the writ petitioner was an unauthorized occupant, the writ Court did not interfere with the same and hence it was dismissed.

Learned Counsel for the appellant argues that the appellant/writ petitioner has become owner of the property by adverse possession.

We do not consider the aforesaid aspect. The plea of adverse possession taken before the first authority or appellate authority as well as before the writ Court cannot be entertained at all. The writ petitioner never put up such plea when he filed a suit for perpetual injunction and the Court granted the relief to the effect that the writ petitioner could not be evicted without due process of law. Therefore, the writ petitioner is evicted if the proper procedure is followed. This plea could have been taken in earlier suit. For not taking so, the writ petitioner's plea is hit by constructive res judicata engrafted in Explanation IV of Section 11 of the Code of Civil Procedure, which is set out hereunder:

“Any matter which might and ought to have been

made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

Therefore, the plea of adverse possession cannot be entertained at all. On fact, it was found that the writ petitioner is an unauthorized occupant of the subject property by the first authority and the appellate authority and thus the writ Court cannot substitute the fact-finding as it is not the case of perversity in recalling the said fact-finding. We do not find any reason to interfere with the judgment and order of the learned single Judge.

Accordingly, the writ appeal is dismissed. Miscellaneous petitions, if any, pending shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

**SANJAY
KUMAR, J**

31.12.2013
Gsn