

SRI JUSTICE A.V.SESHA SAI
WRIT PETITION No.25569 of 2010

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order of the learned Chief Judge, City Civil Court, Hyderabad, in C.M.A.No.6/2007 dated 30.07.2010, confirming the order dated 18.12.2006 passed by the Estate Officer, Second respondent herein in Case No.4/2004 under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

2. The circumstances leading to the filing of the present writ petition are as under:

The respondents pressed into service, the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for brevity 'the Act') vide Case No.4/2004 and the second respondent Estate Officer issued a show cause notice under Section 4 of the Act and responding to the same petitioner gave a reply and the second respondent by way of an order dated 18.12.2006, ordered eviction of the petitioner under Section 5 (1) of the Act from the subject premises i.e., 325 sq. ft on the ground floor and 730 sq feet on the second floor of the building situated at Rashtrapathi Road, Hyderabad. In the said order, the second respondent Estate Officer also granted damages of Rs.1,97,212/-. Assailing the said order of eviction, petitioner filed CMA.6/2007 under Section 9 of the Act before the learned Chief Judge, City Civil Courts, Hyderabad. The learned Chief Judge, by virtue of an order dated 30.07.2010, dismissed the said appeal, confirming the order passed by the primary authority.

3. Challenging the said orders passed by the Estate Officer as

confirmed by the learned Chief Judge under Sections 5 and 9 of the Act respectively, the present writ petition came to be instituted.

4. This Court, on 14.12.2011, issued *Rule Nisi* and responding to the same respondent No.1 filed counter affidavit and also an additional affidavit.

5. Heard Sri V.Ramchander Goud, learned counsel for the petitioner and Sri K.R.L Sarma, learned Standing Counsel for the first respondent Insurance Company apart from perusing the material available before the Court.

6. Submissions/contentions of the learned counsel for the petitioner:

- 6.1. The orders impugned are erroneous, contrary to law, without jurisdiction and violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of the Act.
- 6.2. Without having any valid lease or title, the first respondent initiated the action which is impermissible and totally one without jurisdiction.
- 6.3. The calculation and fixation of damages by the respondent authorities is without any foundation and basis and without any supporting material.
- 6.4. The documents filed by the petitioner herein clearly demonstrate that the subject premises do not belong to the first respondent.
- 6.5. The appellate authority failed to deal with all the aspects and had the same been considered from proper perspective the order under challenge would not have emanated.

7. Submissions/contentions of the learned Standing Counsel for the Insurance Company.

- 7.1. The impugned orders are inconformity with the provisions of the Act.

- 7.2 There is neither illegality nor any procedural irregularity nor there is any statutory or constitutional infraction and in the absence of the same, the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India.
- 7.3. Originally the subject property belonged to the State Government and initially the State Government leased out the property in favour of the first respondent Insurance Company by way of a lease deed dated 16.07.1968 for a period of 30 years which came to an end in the year 1998.
- 7.4. The State Government issued G.O.Ms.No.816, Revenue (Asn.II) Department, dated 09.08.1994, converting the leasehold rights into freehold rights and basing on this the first respondent Life Insurance Corporation approached the second respondent and the second respondent initiated the impugned proceedings.
- 7.5. In view of the conveyance deed dated 28.06.2012 executed by the State Government in favour of the first respondent herein, the title of the first respondent herein cannot be disputed.
- 7.6. The petitioner herein already vacated the subject premises in the month of October, 2010, but the same would not absolve the petitioner of his liability to pay the damages.

8. In the above background, now the issues which this Court is called upon to answer are:

1. Whether the orders impugned are in conformity with the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971?
2. Whether the respondents had the jurisdiction to initiate the proceedings at the relevant point of time?
3. Whether there is any basis for quantification and fixation of the damages?

9. Since the petitioner herein already vacated the subject premises in the month of October, 2010, the scope of adjudication in the present writ petition is confined to the legality in fixing the liability by way of damages under the provisions of the Act.

10. The material available before this Court manifestly discloses that prior to initiation of the impugned proceedings, the first respondent Insurance Company got issued a legal notice dated 08.12.2003, indicating therein that the action would be initiated under the provisions of the Act. Petitioner got issued a reply legal notice dated 26.12.2003, saying that the premises in his possession would not fall under the term 'public premises'. Thereafter, the second respondent Estate Officer issued a show cause notice dated 13.10.2004 under Section 4 of the Act and the petitioner herein contested the case and the second respondent framed the following issues:

1. Whether legal authorization is required from the Central Officer, LIC of India, Mumbai for filing the petition by the Zonal Manager, as such, the petitioner is competent and authorised to file the petition?
2. Whether the petitioner is the owner of the said building?
3. Whether there is a justifiable cause for filing the petition by the petitioner?
4. Whether the tenancy is month to month basis?
5. Whether the notice issued by the petitioner is in order?
6. Whether the forum is competent to entertain the petition filed by the petitioner in view of the non-exemption of the building from the purview of the Rent Control Act of A.P. Government?
7. Whether the respondent is in unauthorised occupation or not, if so, whether liable for eviction, if they are liable for eviction, any arrears/difference in rent or damages to be recovered from them?

8. Whether the damages claimed by the petitioner are appropriate?

9. If any relief, so to what extent?

11. Eventually, the second respondent Estate Officer passed an order in Case No.4/2004 dated 18.12.2006, ordering eviction of the petitioner herein from the premises and to pay damages of Rs.1,97,212/-. The Estate Officer while dealing with issue No.2, touching the ownership in respect of the subject premises, relied upon Exs.PA.7 and PA.8. As against the said order passed by the Estate Officer under Section 5 of the Act, the petitioner herein filed CMA.No.6/2007 under Section 9 of the Act before the Chief Judge, City Civil Courts, Hyderabad. The learned Chief Judge framed the following point for consideration:

“Whether the appellant/respondent is liable to be evicted from B-Schedule premises as ordered by the Estate Officer and is liable to pay damages as ordered?”

12. A perusal of the said order passed by the learned Chief Judge clearly and categorically discloses that even though one of the crucial and significant points is with regard to the ownership of the schedule property, the learned Chief Judge simply confirmed the finding of the Estate Officer which was based on Exs.PA.7 dated 18.11.1950 and PA.8 dated 01.09.1956. The learned Chief Judge also held that the subject premises is a public premises as defined under Section 2 of the Act. There is absolutely no dispute with regard to the fact and it is also the case of the respondent insurance company that the State Government owned the property initially and the State Government executed a lease deed on 16.07.1968 in favour of the first respondent for a period of 30 years and the said period came to an end in the year 1998. The Government of Andhra Pradesh vide G.O.Ms.No.816, Revenue (Asn.II) Department, dated 09.08.1994, converted leasehold lands into freehold in Secunderabad area subject to certain conditions

stipulated therein. The first respondent insurance company vide Ref:E&OS/ESTATES dated 06.11.2000, addressed a letter to the Special Grade Deputy Collector, Estates Office, Revenue Department, Government of Andhra Pradesh and the said letter reads as under:

“We are in receipt of your letters referred above on 4.10.2000. We are informed to pay an amount of Rs.7,15,032/- for leasehold property under L.D.No.2900, and Rs.5,87,385/- for lease hold property under L.D.No.2959 towards renewal fees for 3 years with effect from 16.1.98 and 9.10.98 respectively.

The above two properties were originally taken on lease for thirty years (renewable at our option up to ninety years) with effect from 16.1.38 and 9.10.38 respectively. They were duly renewed by us well in advance on 19.10.67 and 16.7.68 by paying premium of Rs.6807.75p and Rs.5587.77 ps, and total rent for 30 years @ Rs.7.50 per year and @ Rs.15/- per year respectively.

But the amounts demanded by you towards renewal fee for 3 years is exorbitant and unimaginable. You are aware that Life Insurance Corporation of India is a Public Sector Undertaking and in the service of the public in general and its policy holders in particular. Mostly the properties are used as Guest House/residential quarters and the few tenants that are occupying some area are paying only nominal rent. With the result the properties are not generating sufficient income to warrant payment of such high lease rentals. Keeping this in view, we request you to fix renewal fees for the above lease hold properties quite reasonably.

Further, we would like to convey our intention to possess freehold of the above properties. Kindly favour us by quoting a reasonable rate to make the properties freehold, so that we can better develop the properties for housing our offices with an enriched outlook for the better convenience of public.

We will be waiting for your favourable reply.”

13. The said letter was also followed by another letter dated 04.02.2002, expressing the same intention and asking for reasonable rate.

14. Subsequently, vide letter dated 02.12.2009, the first respondent requested the Commissioner of Land Administration to convert the leasehold property into freehold at the earliest. It is also not in dispute that vide CCLA's Proceedings No.S3/504/2003 dated 28.04.2011, the State Government granted permission for conversion of leasehold rights into freehold rights in favour of the first respondent subject to payment of Rs.83,35,276=00 and thereafter the State Government executed Conveyance Deed dated 28.06.2012 in favour of the first respondent herein, conveying the property. A perusal of the order passed by the Chief Judge clearly and categorically discloses that PW.1 clearly stated that he did not file any title deed regarding the disputed subject property and the witness on behalf of the first respondent as PW.1 stated that Ex.PA.7 is not a title deed. In this connection, it may be appropriate to note that by relying upon the Exs.PA.7 and PA.8 the Estate Officer came to a conclusion with regard to the title to the property in favour of the insurance company, but the Chief Judge by the impugned order came to a conclusion that there is no dispute with regard to the title to the property. It is also to be noted that the Estate Officer as well as the learned Chief Judge had no occasion to look into various documents including the conveyance deed and the letters addressed by the State Government for payment of conversion fee. In the considered opinion of this Court, the said documents are highly crucial and vital for deciding the issue as to whether as on the date of initiation of the proceedings the respondent authorities had jurisdiction to initiate such proceedings. In view of the said reason, this Court deems it appropriate to remand the matter to the second respondent/Estate Officer, Life Insurance Corporation of India, Saifabad, Hyderabad for fresh consideration with regard to the jurisdiction of the authorities to initiate proceedings to grant the damages.

15. For the aforesaid reasons, the writ petition is partly allowed,

setting aside the order of the Estate Officer dated 18.12.2006 passed in

Case No.4/2004 and the order of the learned Chief Judge, City Civil Courts, Hyderabad dated 30.07.2010 passed in CMA.No.6/2007, to the extent of fixing the liability to pay damages and the matter is remanded to the second respondent/Estate Officer, Life insurance Corporation of India, Saifabad, Hyderabad for fresh consideration in the light of the above observations. The parties are entitled to file additional documents and to lead further evidence in support of their respective stands. It is made clear that since the petitioner herein already vacated the premises as long back as in the year 2010, this order shall not be construed as the order in favour of the petitioner for the purpose of re-inducting him into the possession of the property i.e., the order to the extent of ordering eviction remains undisturbed. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. No order as to costs.

A.V.SESHA SAI, J

Date:21.01.2015
grk



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HON'BLE SRI JUSTICE A.V.SESHA SAI
WRIT PETITION No.25569 of 2010

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Between:

M/s.G.K.Rao & Co., Sri Cini Corporation,
5-3-340/D, Hyderabad Coop. Insurance Building,
R.P. Road, Secunderabad represented by its
Partner Suryanarayana Reddy
s/o. Tata Reddy, aged about 56 years.

... Petitioner

and

Life Insurance Corporation of India,
Represented by its Secretary (E&OS Estates),
South Central Zonal Office, Jeevan Bhagya,
Saifabad, Hyderabad and another.

... Respondents

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