

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.2116 of 2015

Date: 04-02-2015

Between:

A. Kondaiah

.. Petitioner

AND

The Greater Hyderabad Municipal Corporation,
Represented by its Commissioner and another

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Writ Petition No.2116 of 2015

ORDER:

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This writ petition is filed for a mandamus declaring the proceedings No.2695/EO/GHMC/2015/22, dated nil-01-2015 issued by the 2nd respondent directing the eviction of the petitioner from Shop Nos.8 and 9, Lingampally Market, Circle 9, GHMC, Hyderabad as arbitrary and illegal and for a consequential direction to set aside the same.

2. The case of the petitioner is that one Akbar Ali and Sultan Ali, who are original tenants of Shops in Lingampally market affected in road widening vide their allotment order dated 21/23-04-1999 in respect of Shop Nos.8 and 9 respectively on rent of Rs.500/- and as per the condition of lease there will be automatic 10% increase in rents every year. It is stated that the original allottee Sri Akbar Ali appointed one Murad Ali, S/o Allaaddin Madini to manage the business of the said shops through General

Power of Attorney bearing No.7948 dated 10-04-1997 and also a licence was issued by the 1st respondent under Form-II dated 16-05-2006 in the name of Murad Ali and the petitioner was nominated as Manager under sub-section (2) of Section 17 of the Prevention of Food Adulteration Act, 1954 and was made responsible for the conduct of business and the licence was renewed from time to time and the petitioner is conducting business in the capacity as Manager without any complaint. A notice under Form-B under sub-section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 was issued by the 2nd respondent on nil-07-2014 vide proceedings No.2695/EO/GHMC/2014 and challenging the said notice, Murad Ali representing as Power of Attorney Holder of Akbar Ali filed C.M.A.No.83 of 2014 before the Chief Judge, City Civil Court, Hyderabad, wherein interim stay was granted in I.A.No.4427 of 2014 by the order dated 04-08-2014 and the same was communicated to the 2nd respondent. It is further stated that the neighbour of the petitioner has also filed W.P.No.17818 of 2014, and this court disposed of the said writ petition by order dated 08-07-2014. In pursuance of the said orders, a letter dated 27-11-2014 was addressed to Murad Ali and also to the petitioner for hearing and personal statement in obedience to which, the petitioner appeared and submitted reply on

01-12-2014 and the petitioner brought to notice of the 2nd respondent about granting of interim stay in I.A.No.4427 of 2014 in C.M.A.No.83 of 2014 by the Chief Judge City Civil Court, Hyderabad against the eviction notice dated nil-07-2014 and also stated that despite the said interim stay, the 2nd respondent issued the impugned proceedings directing to vacate the premises

within three days. Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner submits that by virtue of interim stay granted by the Chief Judge, City Civil Court, Hyderabad in I.A.No.4427 of 2014 in C.M.A.No.83 of 2014, the petitioner is carrying out the business as Manager and when the interim stay is subsisting and operating, the respondents cannot direct the petitioner to vacate the premises. He also contends that the original allottee has given General Power of Attorney to Murad Ali, who is the principal employee of the petitioner, in whose absence, the petitioner is entitled to run the business as he was appointed by Murali Ali as Manager under the Prevention of Food Adulteration Act, 1954, as such, he cannot be evicted.

4. On the other hand, the learned standing counsel for the respondents stated that mainly the petitioner has no locus standi to file the writ petition, as the original lease granted in favour of Akbar Ali/Sultan Ali expired long back and no extension of lease was made and the original allottees Akbar Ali/Sultan Ali never approached the court.

5. Even according to the petitioner, he is not the allottee of the subject shops and not even the employee of Akbar Ali and Sultan Ali, who are the original allottees and the original allottees are not the parties to the writ petition, more so, the petitioner is an employee of one Murad Ali, who is stated to be Power of Attorney holder of Akbar Ali and Sultan Ali, the original allottees and if there is any grievance, it is for Akbar Ali and Sulthan Ali to agitate the same, but not the petitioner, moreover, according to the petitioner, Murad Ali is his principal employer is fighting before the Civil Court in respect of same subject matter, and therefore, when the issue is pending before a competent civil court, no parallel proceedings

can be pursued one principal employer and another by the employee in respect of same cause of action, that too in writ proceedings and if it so, it amounts to an abuse of process of court, and thus, the writ petition is liable to be dismissed.

Even as per the petitioner, lease is only for 11 months as per the allotment order dated 21/23-04-1999 in favour of the original allottees and no order extending the same is produced. Just because the petitioner is nominated under Section 17(2) of Prevention of Food Adulteration Act he does not have independent right to agitate against eviction more particularly when his principal employer does not have any independent right except claiming to be power of attorney holder of original allottee. Original allottees are not before Court. In the absence of the same, the petitioner has no locus standi to maintain the writ petition.

In **Board of Trustees of the port of Kolkata v. Kalipada Bhakat and others**^[1], the Apex Court held as follows:

We have considered the rival submissions of the parties. It is not disputed that Respondent 1 contested the eviction proceedings initiated by the appellant, against Respondent 2, Raj Virmani, as her power-of-attorney holder. It is also not disputed that Raj Virmani was the tenant in the premises in question, and her tenancy was terminated. Respondent 1 failed to explain as to how thereafter he occupied the premises without the consent of the Port Trust. From the record it also reveals that Respondent 1 had the knowledge of the eviction proceedings, and he contested on behalf of Respondent 2. As such, in our opinion, the appellate authority has rightly questioned the locus of Respondent 1 in maintaining the appeal along with application for condonation of delay. The eviction order drawn against Respondent 2 attained finality, who never filed nor attempted to file any appeal against the order dated 4-8-2008 passed by the Estate Officer. As such, Respondent 1 who was power-of-attorney holder of Respondent 2, cannot be allowed to maintain the appeal on his own behalf to protract the eviction proceedings. No doubt, sub-section (2) of Section 4 of the Act requires issuance of notice to those in occupation of public premises before the eviction order is passed against such persons, but in the present case before us, since the proceeding has been drawn against unauthorised occupant (Raj Virmani), and to escape eviction, she appears to have handed over possession of the premises to Respondent 1, as such, the subsequent occupier cannot be said to be entitled to fresh notice. If such person is allowed to maintain the appeal, by the time the

eviction proceedings are over against him, he might hand over the possession of the premises to a third or fourth party. Sub-section (2) of Section 4 of the Act cannot be restored to protect the interest of such unauthorised occupants who enter into possession, after eviction proceeding has been initiated against their predecessor-in-possession.

In view of the same, the writ petition is misconceived and deserves to be dismissed with costs, but taking into account the petitioner is only the party employee, this court refrains from imposing costs.

Accordingly, the writ petition is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

A. RAJASHEKER REDDY, J

Date: 04-02-2015

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[\[1\]](#) (2014) 10 Supreme Court Cases 573