

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.302 of 2015 and 236 of 2015

COMMON ORDER :

Since these two Revisions arise between the same parties out of the same Rent Control proceeding, they are being disposed of by this common order.

2. The respondents herein filed the R.C.C. for eviction of petitioners from the R.C. schedule premises alleging that petitioners are their tenants. The petitioners contend that the land in question belongs to the Nandyal Municipality.

3. Pending the R.C., the petitioners filed I.A.No.1016 of 2014 under Order XVI Rule 1 and 6 C.P.C. to issue summons to the Commissioner, Nandyal Municipality to produce letters and to give evidence regarding the issuing of letters to the Sub-Registrar and Municipal Standing Counsel.

4. In the affidavit filed in support of this application, the petitioners contended that respondents have no title to the plaint schedule property; that they filed a suit O.S.No.383 of 1989 seeking a perpetual injunction restraining respondents from trespassing into his site; although the said suit was dismissed, A.S.No.45 of 1993 which was filed against it before the Principal Senior Civil

Judge, Nandyal was allowed confirming the possession of petitioners; that after the disposal of the said appeal, the respondents filed O.S.No.629 of 2003 before the Principal Junior Civil Judge, Nandyal for evicting the petitioners from the municipal site without adding the Municipality as a party and later withdrew the said suit; that it was essential and necessary to summon the Town Planning Officer to produce the street survey plan No.148 and to give evidence to remove the cloud over the title in the suit; and that petitioners came to know that the Commissioner, Municipality, Nandyal issued a letter to the Sub-Registrar, Nandyal not to register any documents regarding the R.C. schedule property stating that it belongs to them and Xerox copies of the said letters had also been filed.

5. Counter affidavit had been filed by respondents opposing this application and pointing out that in A.S.No.45 of 1993 the Court only observed that since petitioners are in physical possession, they cannot be evicted, except through process of court; that O.S.No.629 of 2003 was withdrawn since it was pointed out that only a Rent Control case lies and not a Civil Suit for eviction; respondents had in fact summoned the Municipal Commissioner of Nandyal Municipality and he authorized one K. Sudhakar Babu who gave evidence as PW.4; that he produced Municipal Assessment extract which was marked as Ex.X.1, which indicated that the R.C.C.

schedule property bearing D.No.7/81A is the property of one Shaik Ramija Bee and it previously belonged to one Malan Bee, that they paid Municipal Taxes to the Nandyal Municipality, and it did not belong to either the Government or to the Municipality; that petitioners had also filed I.A.No.712 of 2014 to summon the Municipal Town Planning Surveyor to cause production of Street Survey No.148 and give evidence and that had been dismissed in September, 2014 itself; that the evidence was closed on 24.10.2014 and the R.C. was posted for arguments to 27.10.2014; and at this juncture, this application had been filed.

6. By order dt.04.12.2009, the Court below dismissed the said application. It held that the R.C. is filed for the limited purpose of seeking eviction of petitioners, that title to the property is not in issue and cannot be gone into by the Rent Controller; therefore, the documents sought to be filed by petitioners are not material, and there is no necessity to summon the Municipal Commissioner to give evidence as a witness. The Court also observed that the R.C.C. was coming up for arguments and petitioners had been filing petition after petition to delay the proceedings in the R.C.C.

7. Challenging the same, C.R.P.No.302 of 2015.

8. The petitioners had also filed I.A.No.1028 of 2014 invoking Order VIII Rule 1A (3) C.P.C. to mark the Street

Survey Plan No.148 dt.09.10.1992; report of Town Surveyor dt.06.09.1990; and a xerox copy of a letter issued by the Commissioner, Municipality, Nandyal to the Sub-Registrar, Nandyal.

9. In the affidavit filed in support of the said application it was only contended that the said documents are necessary for better appreciation and consideration of the petitioners' case.

10. Counter-affidavit was filed opposing this application, and reiterating the stand taken in the counter filed by respondents in I.A.No.1016 of 2014, and also stating that petitioners had not given any explanation regarding the custody of said documents. It was also contended that the letter sought to be relied upon by petitioners had come into existence during the pendency of R.C.C. and it cannot be received.

11. This I.A. was also dismissed by the Rent Controller.

12. Challenging the same, CRP.No.236 of 2015 has been filed.

13. Although the counsel for petitioners had sought to contend that the marking of these documents as well as summoning of the Commissioner of Nandyal Municipality are necessary to establish petitioners' defence, I am of the opinion that the principal purpose for which petitioner

wants to summon the Commissioner as well as filing of documents is to establish that the title to the property is with the Municipality. In a proceeding under the Andhra Pradesh Buildings (Lease, Rent and Eviction) control Act, 1960, title to the property is not in issue and it cannot be decided and the Rent Controller can only see whether the denial of title by petitioners is a *bona fide* denial of title or not.

14. Admittedly, the evidence of both sides in the R.C.C. has been closed and the matter has been coming up for submission of arguments in the R.C. In I.A.No.1028 of 2014, no reason is assigned as to why the documents sought to be now filed were not produced at the time when counter-affidavit was filed.

15. It is settled law that power under Order VIII Rule 1A (3) is to be exercised only if sufficient cause is shown for not filing of the documents earlier and since the affidavit filed in support of the said application does not disclose any reason, I am of the opinion that the Court below has rightly dismissed it.

16. Even with regard to the summoning of the Commissioner, Nandyal Municipality, which is subject matter of I.A.No.1016 of 2014, I am of the opinion that the Commissioner of the Municipality need not be summoned and it is open to the petitioners to establish that their denial of title is *bona fide* by any means known to law. So

I do not find any illegality or impropriety in the action of the Court below in dismissing I.A.No.1016 of 2014 also.

17. Therefore, I do not find any merit in the Revisions; and CRP.No.302 of 2015 and CRP.No.236 of 2015 are accordingly dismissed. No order as to costs.

18. As a sequel, miscellaneous petitions pending, if any, in these Revisions shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08.10.2015

Ndr/*