

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.23073 OF 2003

ORDER:

The petitioners pray for Writ of Certiorari to call for the records leading up to and inclusive of order dated 21.10.2003 in C.M.A.No.12 of 2000, on the file of the IV-Additional District Judge, Warangal and quash the same as illegal, arbitrary and unconstitutional.

The issue arises under the provisions of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968 (for short 'the Act').

The Estate Officer of APIIC Limited vide Ref.No.100/M(R)99-00 dated 29.02.2000 directed vacation of premises in possession of 1st petitioner. The petitioners filed C.M.A.No.12 of 2000 before the IV-Additional District Judge, Warangal and through the order impugned in the writ petition, the learned Judge has dismissed the appeal.

Heard Mr.Ashok Anand Kumar for petitioners and Mr.L.Prabhakar Reddy for respondents 1 to 3. Counsel for the parties, keeping in perspective the scope of judicial review under Certiorari, have made submissions.

The circumstances relevant for disposal of the writ petition are not in dispute. Therefore, this Court finds it convenient to chronologically refer to these circumstances.

The respondents by order dated 11.03.1974 read with order dated 01.06.1974 allotted industrial shed (for short 'shed') bearing No.D-9 at Industrial Estate, Warangal to M/s Prabath Electrical Industries represented by its Proprietor Sri V.Laxminarasaiah (2nd petitioner). Laxminarasaiah died and his legal representatives were brought on record.

On 29.06.1974, a lease deed was executed between 1st petitioner and respondents for a period of 15 years from 17.06.1974 to 16.06.1989. On 17.06.1974, respondents handed over possession of the shed. From the beginning, it appears, petitioners 1 and 2 are in default in payment of rent to respondents. The petitioners requested for converting the shed from leasehold to sale on hire purchase basis. On 25.10.1975, the respondents converted the allotment dated 01.06.1974 from lessee to hire purchase holder. The petitioners did not comply with the hire purchase agreement conditions as well. The hire purchase agreement was cancelled and through orders dated 12.07.1988, however, on the request of 1st respondent, the hire purchase agreement was restored again. Finally, the respondents were compelled to cancel the hire purchase agreement of petitioners 1 and 2 by order dated 28.02.1992. The petitioners filed O.S.No.292 of 1992 before the II-Additional Junior Civil Judge, Warangal and the said suit was dismissed. On 16.06.1998, decree was confirmed in A.S.No.61 of 1998, on the file of the II-Additional District Judge, Warangal. Thereafter, proceedings for eviction of petitioners 1 and 2 under the Act were taken up. The Estate Officer admittedly issued notice for which explanation was received and the matter was posted for enquiry. On 28.02.2000, the petitioners allege to have prayed for time and now their grievance is that without granting time, the order of eviction dated 29.02.2000 was passed by the Estate Officer. The petitioners, challenging the eviction order, filed C.M.A.No.12 of 2000 before the II-Additional District Judge and the learned Judge through order dated 21.10.2003 dismissed the civil miscellaneous appeal. Hence, the writ petition.

Mr.S.Ashok Anand Kumar appearing for petitioners contends that the principles of natural justice have been violated, for the Estate

Officer passed the order of eviction without considering the request made through telegram dated 28.02.2000 and the order

of eviction is liable to be set aside on this short ground alone.

He further contends that the respondents claim to have taken possession on 15.04.2000 and the very taking possession is contrary to the order of *status quo* granted by the appellate Court in I.A.No.198 of 2000, more particularly when the petitioners have complied with the conditions imposed by the appellate Court. Therefore, the action of respondents virtually amounts to flying in the face of protection granted by the competent Court and the same ought not to be recognized by this Court for any purpose, likewise subsequent allotment in favour of respondent No.4 is

sub judice, unsustainable and liable to be interdicted.

Mr.Prabhakar Reddy, learned standing counsel opposes the writ prayer and contends that the basis of the submissions of petitioners ignore the following circumstances:

- (a) petitioners 1 and 2 have neither paid rentals nor hire purchase installments from 1974 till April, 2000. Therefore, petitioners 1 and 2 are in clear default of either of the agreements;
- (b) the respondents at the first instance cancelled the hire purchase agreement and on the application filed by petitioners 1 and 2, the hire purchase agreement was restored vide order dated 12.07.1988;
- (c) the respondents, by order dated 28.02.1992 for all purposes taking note of the conduct of petitioners 1 and 2, cancelled the hire purchase agreement;
- (d) O.S.No.292 of 1992 filed by petitioners was dismissed and judgment was confirmed in A.S.No.61 of 1998. The cancellation of allotment vide order dated 28.02.1992 has become final. Therefore, the possession of

petitioners 1 and 2 is not under hire purchase agreement, but having regard to the totality of circumstances, the respondents called upon petitioners 1 and 2 only to pay rental arrears;

- (e) the rental arrears were not paid from 1974 till April, 2000;
- (f) The status of petitioners 1 and 2 is not legal and their possession is treated as unauthorized by the Estate Officer and order of eviction is passed.

It is further contended that there is no record to show that any telegram was sent on 28.02.2000. There is no basis, in fact, for the legal submission and this contention is liable to be rejected.

As regards violation of *status quo* order, it is contended that the appellate Court, after taking note of state of affairs after obtaining *status quo* order behind the back of respondents 1 and 2, on 04.03.2003, dismissed I.A.No.198 of 2000 and finally the civil miscellaneous appeal was also dismissed. Therefore, the possession taken on 15.04.2000 is valid and legal. He draws the attention of the Court to the findings of fact recorded by the appellate Court and prays for dismissal of the writ petition.

I have perused the material available on record and noted the contentions of learned counsel appearing for the parties.

Now, the points for consideration are:-

- (a) whether the order dated 29.02.2000 of the Estate Officer, APIIC, as confirmed in C.M.A.No.12 of 2000, warrants interference of this Court under Article 226 of the Constitution of India or not?
- (b) whether the orders impugned in the writ petition suffer from patent illegality or violate the principles of natural justice and warrant interference of this Court?

The circumstances are not in dispute and before taking up the points for consideration, this Court finds it convenient to summarize the admitted circumstances of the case.

Petitioners 1 and 2, to establish an industry through order dated 25.10.1975, have taken the shed on lease. The petitioners requested for change of the status from lessee to hire purchaser. On 25.10.1975, the orders treating petitioners 1 and 2 as hire purchasers were passed. The hire purchase agreement was cancelled by order dated 28.02.1992, but the status of lessee was not restored. This has become final. Therefore, the petitioners do not have the status of either lessee or hire purchaser. The petitioners neither paid rentals for 25 years nor complied with the conditions of hire purchase agreement. The suit filed by the petitioners was dismissed and the same was confirmed in appeal. For all purposes, when the notice dated 29.02.2000 was issued, the petitioners have no right and against the proceedings initiated by respondents, the petitioners have exhausted the remedies available in law.

Therefore, from the above discussion it is clear that without semblance of right, entitlement, much less paying any amount, the petitioners enjoyed the shed for over 25 years. The contention of Mr.Ashok Anand Kumar that the order of eviction dated 29.02.2000 is violative of principles of natural justice and the failure to take note of the request made through telegram dated 28.02.2000 has substantially vitiated the order, is merely noted to be rejected. The learned Additional District Judge has framed the following points for determination:

- (i) whether the impugned order was passed without affording an opportunity to the appellants and it suffers from illegality?
- (ii) To what relief?

The findings recorded by the learned Additional District Judge are as follows:

“In these circumstances, it cannot be stated that there is denial of an opportunity to the appellants to present their case, nor a fair and reasonable opportunity was given to them. As rightly submitted for the respondent, more than sufficient opportunity was given and in fact it was misutilized by the appellant without repaying the amounts due. He did not even choose to question the order of cancellation of lease till now though it was passed in the year 1992.

In such circumstances, it cannot be stated that there are grounds in this appeal to interfere with the impugned order of eviction. Depositing the disputed amounts in view of the orders of the Court, when an order status quo was granted, cannot be the reason to consider his case sympathetically. As the circumstances pointed out, he was forced and involuntarily, he deposited such an amount, not out of his own volition.”

The request for grant of time is based on telegram said to have been sent on 28.02.2000. Counsel appearing for petitioners fairly states that the telegram is not brought on record. This Court is of the view that even if the telegram is brought on record, in the ultimate analysis, the result could not have been different, except ordering eviction of petitioners 1 and 2. The Estate Officer had considered the explanation given by petitioners and had independently come to conclusion that a case for ordering eviction was made out. The other contention that possession taken on 15.04.2000 is contrary to the *status quo* order dated 31.03.2000 cannot be relied upon by petitioners to challenge the legality or otherwise of the order of eviction. As the main challenge to the order of eviction is in violation of principles of natural justice, this Court is in agreement with the findings recorded by the appellate Court and no exception can be taken to these findings.

As regards violation of *status quo* order, the finding recorded by the appellate Court is that I.A.No.198 of 2000 was dismissed by the Court on 04.03.2003. The dismissal of I.A for all purposes amounts to taking note of the failure of petitioners to serve notice on respondents 1 to 3, who were caveators before the appellate Court and the miscellaneous appeal was finally dismissed on merits. The possession taken on 15.04.2000, even if for any reason is contrary to the *status quo* order, but having regard to the dismissal of I.A and dismissal of CMA, this contention is untenable and accordingly rejected. This Court is in full agreement with the findings of fact recorded by the appellate Court. The contention of petitioners disentitled them for grant of any relief. No case is made out.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

Date:30.06.2016

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