

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT APPEAL NO.1025 OF 2016

AND

WRIT PETITION NO.17863 OF 2016

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

The Kadapa Municipal Corporation is in appeal against the interlocutory order passed by the learned Single Judge in WP.MP.No.21962 of 2016 in WP.No.17863 of 2016 dated 03.08.2016 extending the interim order until further orders. By the interim order, the appellant herein was directed not to dispossess the respondent-writ petitioners from the subject premises which belonged to the appellant-Corporation.

The fact that the shops belong to the Municipal Corporation is not in dispute. The contention of the writ petitioners, before the learned Single Judge, was that G.O.Ms.No.120 dated 31.03.2011 was issued in view of the order of the Division Bench of this Court in WP.No.6354 of 2009 dated 25.08.2009 which, in turn, was based on the interpretation of Rule 12(1) of the 1968 Rules read with Rule 5 of the 1967 Rules made in exercise of the powers conferred under the Andhra Pradesh Municipalities Act; both G.O.Ms. No.120 dated 31.03.2011, and the order of the Division bench, stipulated that no shop could be leased for a period exceeding 25 years; and, as the subject shops belong to the Kadapa Municipal Corporation, and not a Municipality, neither the G.O. nor the order of the Division bench had any application.

While Sri S.D.Gowd, learned Standing Counsel for the appellant, would submit that the respondent-writ petitioners, who had invoked the jurisdiction of this Court ought to have placed necessary evidence before this Court to establish that they were in actual possession of the subject shops pursuant to a valid lease granted to them by the Kadapa Municipal Corporation, and the lease period of 25 years had not expired, Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the respondent-writ petitioners, would contend that, since the very basis of the eviction notice is G.O.Ms.No.120 dated 31.03.2011 which is based on an order of the Division Bench of this Court in WP.No.6354 of 2009 dated 25.09.2009 which in turn is based on the Rules made under the A.P.Municipalities Act, the Kadapa Municipal Corporation lacked jurisdiction to evict the petitioners, from the subject shops, under the provisions of the Greater Hyderabad Municipal Corporation Act.

Sri S.D.Gowd, learned Standing Counsel for the appellant, would refer to Section 148(3) of the Greater Hyderabad Municipal Corporation Act, 1955 ("the Act" for brevity) which stipulates that in cases not covered by sub-section (2) of Section 148 of the Act, the Commissioner shall not lease, sell or otherwise dispose of any movable or immovable property belonging to the Corporation without the previous sanction of the Corporation and of the Government. The proviso thereto stipulates that, in no case shall the lease period, of the immovable property, exceed 25 years. Learned Standing Counsel would submit that, even in terms of the proviso to Section 148(3), no lease can be granted beyond the period of 25 years; and the respondent-writ petitioners cannot,

therefore, claim to be entitled to remain in possession of the subject property, without a valid lease in their favour, for more than 40 years.

It is wholly unnecessary for us to examine the factual disputes as to whether the respondent-petitioners are in possession of the subject shops for more than 25 years, as the impugned notice is based on G.O.Ms.No.120 dated 31.03.2011. While the proviso, to section 148(3) of the GHMC Act, does prohibit the Kadapa Municipal Corporation from granting lease of an immovable property for a period exceeding 25 years, it was necessary for the appellant Corporation to issue a notice to them, in terms of the proviso to Section 148(3) of the GHMC Act, and to take action thereafter, in accordance with law, after giving the respondent-writ petitioners an opportunity of being heard.

We consider it appropriate, in such circumstances, to set aside the impugned notice. It is made clear that this order shall not preclude the appellant from issuing an eviction notice afresh, in terms of the proviso to Section 148(3) of the GHMC Act, and take action in accordance with law after giving the respondent-writ petitioners an opportunity of being heard.

Both the Writ Appeal and the Writ Petition are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

17th October 2016
RRB