

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.14920 of 2007

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ORDER:

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This writ petition under Article 226 of the Constitution of India is filed seeking the following relief:-

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus by calling for the records relating to and connected with Proceedings Lr. No.2/07/SETVIS/L.I dated 30-6-2007 and set aside the same holding it absolutely illegal, arbitrary, without jurisdiction and in gross violation of principles of natural justice and consequently declare that the petitioners are entitled to continue in their respective shops of SETVIS Shopping Complex on payment of regular rents in the interest of justice and pass such other order or orders as are deem fit and proper in the circumstances of the case.”

(Reproduced verbatim)

2. The case of the petitioners as per the submissions made at the hearing and as set out in the writ petition, in brief, is this:

As per the understanding of the writ petitioners, the Andhra Pradesh Industrial Infrastructure Corporation (APIIC), which owned the subject land, had entrusted the same to the Scheduled Caste Corporation for construction of a building thereon and leasing out the shops in that building to the unemployed youth belonging to the Scheduled Caste community to enable them to earn their livelihood by doing small and petty businesses in the shop rooms to be respectively allotted to them. On such entrustment of the land, the Scheduled Caste Corporation had constructed a one storied building with seventeen (17) shops in the ground floor and a single unit on the first floor. The seventeen (17) shops, which were constructed in the ground floor, were allotted to the petitioners herein and the 1st floor was allotted for establishment of a hospital. The construction was made in the year 1983 with RCC pillars and beams and is a pucca construction. The allotment of shops was made by the 1st respondent on lottery system. At the inception,

lease deeds for a period of three (3) years were entered into between the allottees of the shops and the respondents. However, subsequently, no further lease deeds were executed. The original lease amount was fixed at Rs.340/- per month and the said lease amount is being paid by all the petitioners. All the petitioners are educated and unemployed persons and they are prohibited from entering into any other sort of employment. The leasehold rights are not transferable to third parties nor are the businesses allowed to be carried on by third parties. The petitioners are running their businesses in the respective shops and are eking out their livelihoods. The income from the respective businesses is the only source of livelihood for the petitioners. While so, the 3rd respondent had issued a notice on 31.03.2006 to all the occupants of the subject shops in the said Setwin complex stating that all the tenants have to vacate their shop rooms as repairs are to be affected to the building, which is in a dilapidated condition. In the said notice, it was also stated that in future, if any damage or loss of lives takes place due to any untoward incident, the lessees will only be responsible for such consequences and not the 3rd respondent. On that, the petitioners gave a detailed reply in April, 2006 stating that they have been doing white-washing and other minor repair works from time to time and that the building is fit for inhabitation and that there is no threat or apprehension or danger or likelihood of the building falling down due to its alleged dilapidated condition. Nevertheless, without examining the contents of the said reply and without giving any further opportunity to the petitioners to establish their case, the impugned notice dated 30.06.2007 was issued *inter alia* stating that that the shopping complex was constructed about 20 years back and that on account of recent incessant rains, there is a likelihood of danger to the building and that, therefore, the occupants of the building/lessees are required to immediately vacate the building to facilitate the demolition of the building as informed by the Executive Engineer, R & B, Visakhapatnam. And, by the said impugned notice, the writ petitioners were directed to vacate the shops before 5 PM on 15.07.2007. The 3rd respondent is an autonomous and independent body. It is not a State Government and its property is not

governed by the provisions of A.P Government Lands and Buildings (Termination of Lease Act) 1986 ('the Act of 1986', for brevity). Therefore, the 3rd respondent is required to invoke the provisions of the A.P Buildings (Lease, Rent and Eviction) Control Act, 1960 for the purpose of evicting the petitioners. Further, even the provisions of the said Act of 1986 empower the respondents to terminate the lease only in case the building is required for public purpose. In the present case, it is not the case of the respondents that the building is required for public purpose. Even if the building is required for public purpose, the procedure contemplated under the A.P. Public Premises Eviction of Unauthorized Occupants Act, 1958 has to be invoked. The petitioners came to learn that the impugned notice was issued to demolish the building to enable the Scheduled Caste Corporation to return the land to APIIC for its use for another purpose. Thus, the real reason for demolition is not the dilapidated condition of the building. If the building is demolished by evicting the petitioners, they would be deprived of their livelihood. The original scheme was intended to provide permanent employment to the educated unemployed youth. After a lapse of 23 years, if the petitioners were to be deprived of their livelihood, they would suffer untold misery and it also affects their right to live with dignity. The proposed arbitrary action of the respondents is in violation of Articles 14 and 21 of the Constitution of India and is against the principles of natural justice. No enquiry was conducted and no opportunity of hearing was given to the petitioners before issuing the impugned notice.

3. No counters are filed by any of the respondents.

4. I have heard the submissions of the learned counsel for the writ petitioners. No submissions are made on behalf of the respondents despite granting reasonable and sufficient opportunity.

5. The learned counsel for the petitioners while making submissions in line with the case pleaded in the writ petition would further submit that the building is not in a dilapidated condition, but, is in a fit and habitable condition and that as stated in the writ petition, the real reason for issuing the

impugned notice is to enable the Scheduled Caste Corporation to return the land to APIIC for its use for another purpose, but not the dilapidated condition of the building and that the building is in a dilapidated condition is a subterfuge to somehow evict the petitioners and that the petitioners, who are all educated and en-employed youth of Scheduled Caste community, are eking out their livelihoods by carrying on their respective businesses in the shops in the subject building and that if they are evicted from their shops after 23 years, not only the petitioners but also their families would be deprived of their livelihood as the income from the petty businesses of the petitioners in the respective subject shops is the only source of income for their families and that when a notice was issued, a reply was given by the writ petitioners and that without conducting an enquiry and without giving an opportunity of hearing, an unilateral decision was taken and that in fact, the petitioners are white-washing/colour washing their respective shop rooms as per their convenience and are affecting minor repairs as and when necessary and are maintaining their shops in inhabitable condition and hence, the averment in the notice that the building is 20 years old and that due to recent incessant rains, the building is likely to collapse is not a correct fact and that for non-filing of the counter despite granting sufficient time to the respondents, the principle of non-traverse is to be applied and that by accepting the case of the writ petitioners as pleaded and established, the writ petition may be allowed and the impugned notice may be set aside in the interests of justice.

6. In support of his submissions, the learned counsel having placed reliance on a decision in **State of Orissa v. Dr. (Miss) Binapani Dei and others**^[1] and also Sections 456 to 460 of the Greater Hyderabad Municipal Corporation Act, 1955 had further contended that even assuming for a moment that the building is in a dilapidated condition, a notice shall be given requiring the aggrieved parties to submit their objections and that unless a reasonable opportunity of stating objections and adducing evidence is given, no decision shall be made for demolition of the subject building and that any such decision made without following the procedure established by law is required to be set aside.

7. I have gone through the pleadings and I have given earnest consideration to the submissions. I have perused the material record.

8. There is no need to restate the pleadings, which are extracted supra, in detail. It is pertinent to note that keeping in view the serious dispute as to the condition of the building this Court had taken a view that it is necessary to have the condition of the building assessed by an expert body and therefore passed an interim order accordingly. The operative portion of the interim order dated 12.07.2007 reads as under:

Having regard to the facts and circumstances of the case, it is directed that

a) The Principal, University College of Engineering, Andhra University, Visakhapatnam, shall depute the Head of the Department of Civil Engineer, or any Professor of the same department, to cause inspection of the building in question, and submit a report to this Court, by post, within three weeks. For this purpose, the petitioners shall deposit a sum of Rs.5,000/- (five thousand) with the Principal of the said college.

b) There shall be stay of eviction of the petitioners on condition that they shall pay rents @ Rs.1,000/- (one thousand) per month, with effect from July 2007, and

c) In case, any mishap occurs, on account of the collapse of the building, in the form of loss of life, or damage to property; the petitioners shall not be entitled to blame any one, or to claim relief against others.”

Pursuant to the above orders of this Court, the Principal, Andhra University College of Engineering has sent a report dated 27.07.2007. A perusal of the said report would show that the subject building is an RCC column structure consisting of two floors and that on carrying out non-destructive tests and other tests, the following features had emerged.

The following observations were made in the Ground Floor Structure:

“1) No Spalling of concrete or exposure of reinforcement in slabs, beams and columns was observed

2) No slab wet condition and leakage, because another floor was constructed.

3) There is no indication of moisture seepage in the walls

4) At portico 750 mm (approximate) reinforced wall was constructed to paint the shop names, etc. This was spoiled a little and reinforcement was exposed here little, which can be

repaired.”

In the report, it is further opined that as per the observations, the strength of the concrete is satisfactory.

9. Having regard to the content of the above report, this Court, by orders dated 03.09.2007, had granted interim suspension of the impugned notice dated 30.06.2007 pending further orders and allowed the petitioners to continue in the premises subject to payment of rents as per the earlier interim order dated 12.07.2007. Accordingly, the petitioners are continuing in the respective shops and are carrying on their respective businesses and are eking out their livelihoods. Neither counters to the writ petition nor are objections to the report filed by the respondents. Therefore, applying the principle of non traverse the contentions of the writ petitioners and the contents of the report of the expert body can *prima facie* be accepted and be given due weight. Having regard to the reasons, this Court is satisfied that the impugned notice, which is contrary to the facts and which was issued without giving reasonable and fair opportunity to the petitioners to establish their contentions is unsustainable and is liable to be set aside.

10. Accordingly, the Writ Petition is allowed and the impugned notice dated 31.03.2006 is set aside and the petitioners are allowed to continue in the respective shops subject to payment of rents as per the interim order dated 12.07.2007. It is made clear that the respondents are at liberty to either renew the leases, if they so desire, on amicable fresh terms agreeable to the parties or take any appropriate legal measures, in strict accordance with the procedure established by law, if they so desire and so advised. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SEETHARAMA MURTI, J

06th January 2016
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[\[1\]](#) AIR 1967 SUPREME COURT 1269