

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.2937 of 2016****ORDER:**

This Revision Petition under Article 227 of the Constitution of India is filed by the Revision Petitioners challenging the Order dt.11.04.2016 in I.A.No.158 of 2016 in O.S.No.936 of 2012 on the file of V Senior Civil Judge, City Civil Court, Hyderabad, whereby the petition filed by them under Section XV-A of CPC was dismissed.

2. For convenience of reference, the parties to the appeal will herein be referred as ranked in I.A.No.158 of 2016 in O.S.No.936 of 2012 on the file of V Senior Civil Judge, City Civil Court, Hyderabad, through out the Order.

3. The revision petitioner/plaintiff filed suit for ejectment of respondents herein/ defendants in O.S.No.936 of 2012 and filed I.A.No.524 of 2012 to direct the respondent No.1/defendant No.1 to deposit a sum of Rs.2000/- per month and the said Order became final. Accordingly, respondent No.1 deposited rent till May, 2015 and died in the year 2015. Subsequently, respondent Nos. 2 to 4 were brought on record as legal representatives of the deceased respondent No.1, but failed to comply the direction issued by this Court and requested strike off the defence in the suit.

4. Defendants filed Counter denying the material allegations including subsisting relationship between the revision

petitioner/plaintiff and the respondents/defendants while contending that they are not the tenants in occupation of the premises and it was vacated in the month of October, 2014, as the property was acquired by G.H.M.C for Metro Rail Project, and thus, the property was not in existence for occupation of the respondents since November, 2014. Mere depositing of rent of Rs.2000/- per month up to July, 2015, by Cheque bearing No. 783533 dt. 31.07.2015, would not confer any right to recover rent after November, 2014 and prayed to dismiss the Petition.

5. The trial Court framed as many as four Points for consideration and decided all the points against the revision petitioner/plaintiff and in favour of respondents.

6. Sri Bankathlal Mandhani, learned counsel for revision petitioner while assailing the order, raised several contentions and mainly contended that in the absence of any surrender of tenancy, the demolition of the superstructure by G.H.M.C for acquiring the same for Metro Rail Project does not amount to either express or implied surrender and thereby, the Order dt. 11.04.2016 is illegal and prayed to set aside the same and strike off the defence set up by the respondents herein/defendants in the main suit.

7. On the other hand, Sri M. Govind Reddy, learned counsel for respondents, would contend that when the property was acquired, the revision petitioner/plaintiff ceased to be the owner of the property since the title vested on the Government i.e., Acquisition Department, and the revision petitioner is not entitled

to collect rent though there is no express or implied surrender and they are not liable for payment of rent and prayed to dismiss the petition.

8. The main endeavor of the learned counsel for revision petitioner is that when respondent No.1/tenant deposited rent till May, 2015 i.e., even after alleged acquisition of the property, and demolition of the building in the month of November, 2014 amounts to waiver of such plea and now legal heirs of the deceased respondent No.1 cannot turn around and contend that they are not liable for payment of rent.

9. It is a strange case where the premises was demolished while the tenant was in occupation in the month of November, 2014 after acquisition in the month of October, 2014 during pendency of the suit. When the property was acquired and Award was passed for payment of compensation, the original owner ceased to be a landlord since the title is vested with the Government or Requisition Department. However, there is no proof of surrender of the lease either by express or implied surrender. Even otherwise, when the demised premises was destroyed, the liability of lessee would continue to subsist.

10. Section 108 of Transfer of Property Act, 1882, is relevant for consideration. It reads as follows:

“In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased”.

11. The present facts requires consideration of Section 108 (B) (e) i.e., Rights and Liabilities of the Lessee. According to Clause (e), if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision.

12. In view of the above provision, when the premises was demolished and possession was taken by G.H.M.C acquiring the property under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and it amounts to implied surrender since the premises substantially became unfit for the purpose for which it was let out. But, in view of the law declared by the Apex Court in *Shaha Ratansi Khimji and Sons v. Proposed Kumbhar Sons Hotel (P) Limited and others*¹, it is difficult to accept the implied surrender. The Apex Court held that

“immovable property means landed property and may include structures embedded in the earth such as walls or buildings for the permanent beneficial enjoyment. A lease of immovable property is a transfer of right to enjoy such property in consideration of price paid as per Section 105 of the T.P. Act. By way of lease, a right and interest is created which stands transferred in favour of the lessee. The immovable property, thereafter, only can be reverted back on determination of such right and interest in accordance with the provisions of T.P. Act. Therefore, once the right of lease is transferred in favour of the

¹ 2014(5) ALD 181 (SC)

lessee, the destruction of a house/building constructed on the lease property does not determine the tenancy rights of occupant which is incidental to the contract of the lease which continues to exist between the parties”.

“On interpretation of Section 108 (B) (e) by assuming when a building or structure is leased out, it is the superstructure that is leased out in exclusivity, cannot be allowed in light of language employed in Section 108 (B)(e) of T.P. Act. The singular exception that has been carved out is the wrongful act or default on the part of the lessee which results in the injury to the property that denies the benefit. In all other circumstances which find mention under Section 111 of the Act, are the grounds for determination of the lease. This is the plainest construction of the provision and there is no other room for adding to or subtracting anything from it. Be it stated, Section 108 postulates the rights and liabilities of lessor and lessee. If a right is not conferred by the status on the lessor for determination, except one exception which is clearly stipulated there in Section 108 (B) (e) by the legislature, it would not be permissible for the Court to add another ground of the base or fulcrum of ethicality, difficulty or assumed supposition”.

13. Section (B) of 108 of Transfer of Property Act deals with ‘Rights and liabilities of the lessee’. If a right is not conferred by the statute on the lessor for determination, except one exception which is clearly stipulated therein Section 108 (B) (e) by the Legislature, it would not be permissible for the Court to add another ground of the base or fulcrum of ethicality, difficulty or assumed supposition.

14. In view of the law declared by the Apex Court, Section 108 B(e) would not come to the aid of the respondents/defendants to infer that lease is surrounded by implication, strangely, in the facts and circumstances of the case, the revision petitioner ceased to be the owner of the property, in view of the acquisition of the property by the G.H.M.C for Metro Rail Project, but the trial Court taking into consideration the acquisition of the property under Land Acquisition Act by passing an Award, though such plea is raised before the trial Court regarding demolition of

the structures after acquiring the property, the trial Court did not decide the entitlement of revision petitioner/plaintiff to claim rent. In the peculiar facts and circumstances of the case, I find that it is a fit case to remand the matter to the trial Court to determine the rights of the parties based on the acquisition of the property by the GHMC and the demolition of the building with reference to the law declared by the Apex Court, referred to supra, and in the light of Section 108 B (e) of T.P. Act, and decide the petition afresh and accordingly while setting aside the Order passed by the trial Court in I.A.No.158 of 2016 in O.S.No.936 of 2012 on the file of V Senior Civil Judge, City Civil Court, Hyderabad.

15. In the result, this Civil Revision Petition is allowed remanding the petition to the trial Court to dispose of the petition afresh, keeping in view the direction issued by this Court in earlier paras, as early as possible, but not later than one month, from the date of receipt of a copy of this Order. No costs.

Consequently, miscellaneous petitions, if any, pending in this case shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 31-08-2016.

Note: Issue C.C. in three days.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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Dt.31.08.2016

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