

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT APPEAL NOS.1018, 1026, 1028, 1030, 1031, 1035,

1036 AND 1037 OF 2016

AND

WA.NOS.1057, 1058, 1059, 1060, 1061, 1062, 1063

AND 1064 OF 2016

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

The appellants herein filed WP.No.18347 of 2016 and batch questioning the action of the Greater Visakhapatnam Municipal Corporation (GVMC) in issuing eviction notices directing them to vacate the subject sites, wherein they were conducting their petty business, as arbitrary and illegal.

These Writ Petitions were disposed of by the learned Single Judge holding that the lease period of three years was from 01.03.2012 to 28.02.2015; since the Corporation was not putting the premises to use, the petitioners were allowed to remain in possession; as the Corporation needed the premises, they had issued the impugned notices; Condition No.23 of the lease agreement stipulates that, on termination of expiry of lease, the lessee should hand over the premises to the lessor with all its fixtures and additions; and the contention, that issuance of notices of eviction was illegal, could not be accepted. Thereafter the Learned Single Judge noted the request of the learned counsel for the petitioner that some time be granted for vacating the premises and, while noting the objection of the learned Standing Counsel for the GVMC thereto, granted the petitioners time to vacate the

premises. Recording the undertaking of the Learned Counsel for the petitioners that the petitioners would vacate the premises within a period of three months from the date of the order, and would pay all rental dues before shifting the premises, the Learned Single Judge directed the petitioners to submit an undertaking before the Zonal Commissioner within ten days from the date of the order. Aggrieved by the order passed by the Learned Single Judge, in these Writ Petitions, the petitioners have preferred appeals before us under Clause 15 of the Letters Patent.

Prior thereto, they filed applications before the Learned Single Judge seeking review of the orders passed in the Writ Petitions. Relying on the judgment of the Supreme Court in **Himalayan Co-operative Group Housing Society v. Balwan Singh**¹, the petitioners contended before the Learned Single Judge, in the review applications filed by them, that their counsel had not sought instructions from them before giving such an undertaking to the Court; and the eviction notices were issued at the instance of an M.L.A. which was clear from the documents obtained by them, after disposal of the Writ Petitions, under the Right to Information Act.

In the order, passed in the review applications, the Learned Single Judge recorded the submission of the learned Standing Counsel for GVMC that no concession had been made by the earlier counsel for the petitioners, and orders were passed in the Writ Petitions on merits. After extracting the order passed in the Writ Petitions, the learned Single Judge observed that Condition No.23 of the lease agreement, which was entered into between the

¹ 2015(4) Supreme 438

petitioners and the respondent-Corporation, clearly stipulated that, on expiry of the lease period, the lessee shall hand over the premises to the lessor with all its fixtures and additions; in view of the above, the submission that the impugned notice was illegal was rejected earlier; at that stage, the counsel for the petitioner had sought time to vacate the premises; it could not be said that there was any concession made by the counsel which led to the passing of the impugned order; the Court was not inclined to consider the request of the petitioner on merits, and had come to the conclusion that the request of the petitioner should be rejected; the counsel had sought time to vacate the premises; and, therefore, the argument that a concession was made by the counsel for the petitioners was not tenable.

The Learned Single Judge further observed that the undertaking given by the counsel for the petitioner was pursuant to the findings arrived at in the earlier part of the order, and there was no justification in seeking review on this ground. With regards the petitioners' claim that they had sought extension of lease, and that orders were passed at the behest of the M.L.A. were concerned, the learned Single Judge held that facts, which had come to light subsequent to the order, may not be a ground to review the order passed earlier; and it is only if the order suffers from an error apparent on the face of the record would it necessitate being reviewed. The Learned Single Judge relied on **Dr. Subramanian Swamy v. State of Tamil Nadu**² and **State of Gujarat v. Justice Ramesh Amritlal Mehta (Retired)**³ in this regard. Aggrieved, by the orders passed by the Learned Single

² (2014) 5 SCC 75

³ (2013) 4 SCC 47

Judge in the review applications, the petitioners have preferred appeals before us.

We are disposing of all the Writ Appeals, (preferred both against the orders passed by the learned Single Judge in the Writ Petitions and the orders passed by him in the review applications), by way of a common order. By the impugned eviction notice, issued on 31.05.2016, the petitioners were informed that their lease period of three years had expired on 22.08.2015; no extension of lease was granted by the Corporation thereafter; the premises was under their unauthorised occupation; the petitioners had submitted application for further extension of lease; the Corporation was not willing to extend the lease period as the land, under the occupation of the lessees, was required for future development of the Corporation; and hence their lease rights were terminated from the day of expiry as per the orders of the executive authority (Commissioner, GVMC) on 25.05.2016. The eviction notice also refers to condition No.23 whereunder, on termination of expiry of the lease, the lessee was required to hand over the premises to the lessor with all its fixtures and additions. The petitioners were instructed to vacate the leasehold premises within seven days from the date of receipt of the eviction notice duly clearing all the dues of lease rents, interest and other charges payable to the GVMC.

While the eviction notice refers to the arrears of rent due and payable by the petitioners, this aspect has not been dealt with by the petitioners in the affidavit filed in support of the Writ Petition. We must, therefore, proceed on the premise that arrears of rent were due, and petitioners herein were liable to pay these arrears to

the Corporation as referred to in the eviction notices impugned in the Writ Petitions. We see no reason to take a view, different from that of the learned Single Judge, that the order passed by him earlier in the Writ Petitions was on merits, and it is only after he had recorded that there were no merits in the Writ Petition, that the Learned Counsel for the petitioners had sought time for the petitioners to vacate the premises, which was acceded to on certain conditions.

Reliance placed, on behalf of the petitioners, on **Himalayan Co-operative Group Housing Society**¹ in this regard is wholly misplaced. In the said case, the Writ Petition was filed to set aside the order passed by the Registrar of Co-operative Societies and the revisional authority under the Delhi Co-operative Societies Act, 2003. The Delhi High Court found no error in the order of the Registrar or in the order passed by the revisional authority, and found no ground to interfere therewith. However, on a request made by the writ petitioners seeking a direction to the respondent-society to consider their request for construction and allotting additional quarters, the counsel for the respondent-Society agreed thereto. Consequently, the Delhi High Court issued directions to the Society to construct additional quarters, and allot them to all the writ petitioners. Contending that they had not authorised their counsel to make any concession in favour of the writ petitioners, the Society filed a review application, and thereafter invoked the jurisdiction of the Supreme Court. It is in this context that the Supreme Court observed:-

“.....If for any reason, the Writ Court perceived the oral request made by the respondents to have justified the ends of justice and desired to accept the concession so made by the counsel for Appellant-Society, the said request not being the subject matter of the Writ Petition required

the Court to query whether the counsel for the Appellant-Society has been authorized to make such a statement by the Appellant-Society or whether any such resolution has been passed by the Appellant-Society giving concession in matters of this nature. Since the required caution was not exercised by the learned Judges of the Writ Court, the directions issued by the Writ Court suffer from infirmity and hence require to be set aside.....”

It is evident from the facts noted hereinabove that the request made by the writ petitioners before the Delhi High Court was not even the subject matter of the writ petition, and the Supreme Court, therefore, observed that the said request, not being the subject matter of the writ petition, required the Court to query whether the counsel for the Society had been authorized by the Society to make such a statement or whether any resolution had been passed by the Society giving concession in matters of this nature. In the present case, eviction of the petitioners from the subject shops is the subject matter of the Writ Petitions. As the learned Single Judge expressed his disinclination to interfere with the notices seeking eviction of the petitioners, the Learned Counsel for the petitioners had requested the Court to grant some time for the petitioners to voluntarily vacate the subject premises. Unlike in **Himalayan Co-operative Group Housing Society¹**, where the counsel for the respondents in the Writ Petition had given the concession, in the present case the request for grant of time to vacate the premises was made not by the counsel for the respondent-GVMC but by the counsel for the Appellants-writ petitioners herein. Reliance placed by Sri P.Rajasekhar, learned counsel for the appellants, on **Himalayan Co-operative Group Housing Society¹** is, therefore, misplaced. The *bona fides* of the petitioners, in raising this ground for seeking review and for preferring an appeal thereafter, is also suspect. On being asked

whether the petitioners had initiated any action against their counsel, for the concession given by him without their consent, Sri P.Rajasekhar, learned counsel for the petitioners, would fairly state that the petitioners have not made any complaint against their counsel either to the State Bar Council or to any other authority. Change of a counsel midstream, and casting aspersions on the counsel who appeared for them earlier, must be viewed with skepticism, more so when no action has been taken by the petitioners, against their earlier counsel, either by way of a complaint to the State Bar Council or before any other authority.

It is no doubt true that an application for review is maintainable on discovery of new and important matters of evidence, which was not earlier within the knowledge of the applicants seeking review. The information, obtained by the appellants subsequently under the Right to Information Act, may well constitute a ground to seek review of the earlier orders passed in the Writ Petitions. On a detailed examination of these documents, we are satisfied that the said information does not also justify interference with the order passed by the Learned Single Judge in the Writ Petitions. Even if a public representative is said to have made a complaint to the GVMC, with regards unauthorized occupation of its premises, that does not mean that the Commissioner, GVMC had acted at the dictates of the public representative. The impugned orders of eviction make no reference to any such complaint having been made by the M.L.A. The M.L.A., who is said to have influenced the Commissioner into passing the impugned eviction notices, has not even been arrayed in the review petitions as a respondent eo-nominee. It would be

wholly inappropriate for us therefore, in view of the law laid down by the Supreme Court in **State of Bihar v. P.P.Sarma**⁴, to consider the allegations of malafides, made against the said M.L.A or to hold that the eviction notices are vitiated thereby, without giving him an opportunity of being heard. It is also not in dispute that the lease period of three years has already expired, and arrears of rent were due from the petitioners herein to the GVMC. The action of the GVMC, in seeking their eviction, cannot therefore be faulted, more so in the light of the specific assertion in the eviction notices that the subject land was required by the GVMC for the purposes of development.

While Clause 32 of the lease agreement entitles the petitioners to seek extension of lease on their offering to pay 33 and 1/3% higher rent, and enables the Corporation to consider such a request, it is clear from the impugned eviction notices that the petitioners' representation in this regard has been considered and rejected by the GVMC. Clause 32 does not confer any right on the petitioners to claim automatic extension of the lease, and merely enables the GVMC, if it so chooses, to extend the lease on receipt of enhanced rent by 33 1/3%. While the submission of Sri P. Rajasekhar, learned counsel for the appellants, that refusal to exercise discretion must be on just and valid grounds, and not at the whims and fancies of the GVMC has considerable force, the impugned eviction notices record that the subject property is required by the Corporation for the purposes of the development. As the information obtained by the petitioners under the Right to Information Act suggests that the petitioners were being evicted at

⁴ 1992 (2) Supp. SCC 222

the instance of the M.L.A, and on his assurance that the subject land belonging to the Corporation would be given on lease to others, we asked Sri S. Lakshminarayana Reddy, learned Standing Counsel for GVMC, as to what the GVMC meant by the use of the words “*development purpose*” in the eviction notices. Sri S. Lakshminarayana Reddy, Learned Standing Counsel for GVMC, would submit that the Corporation intends to construct a shopping complex on the subject land. We see no reason, therefore, to accept the submission that the eviction of the petitioners herein is only to accommodate some others in the subject land.

Viewed from any angle, we see no reason to interfere with the orders passed by the learned Single Judge both in the Writ Petitions and in the reviews applications. All the Writ Appeals fail and are, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

14th October 2016
RRB