

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.27706 of 2010

ORDER:

Initially, petitioner No.1, filed the present writ petition and since he passed away pending writ petition, this Court, by way of an order, dated 27-11-2014 in W.P.M.P.No.45152 of 2014 permitted the petitioners 2 to 4 to come on record as legal representatives of deceased petitioner No.1.

Petitioners herein claimed to be the owners of the building bearing No.13-77 situated at Thorrur town and mandal of Warangal District. On the request made by the 6th respondent, the 1st petitioner herein leased out the said building subject to payment of monthly rent of Rs.4,000/- or the rent as fixed by the 4th respondent – Executive Engineer, Roads and Buildings, and the same would be evident from the Rent Demand and Declaration Certificate, dated 03-02-1995 signed by the 1st petitioner and the 6th respondent – Prohibition and Excise Inspector, Thorrur. There is no dispute with regard to the reality that the 6th respondent took possession of the building on 01-12-1993.

According to the petitioners, 6th respondent did not pay the rents on the ground that the amount was not fixed by the concerned authorities. It is further pleaded that after long

persuasion respondents 5 and 6 sent the file to the 4th respondent – Executive Engineer, Roads and Buildings and respondent No.4 fixed the monthly rent @ Rs.3300/- taking into consideration the instructions of the Government.

The grievance, in the above background, is that the Joint Collector, Warangal instead of fixing monthly rent @ Rs.3300/- as per the recommendations of the 4th respondent – Executive Engineer, reduced it to a sum of Rs.2200/- per month with effect from 01-12-1993.

The complaint of the petitioner is that for arriving at Rs.2200/- the Joint Collector took into consideration the orders of the Government issued vide G.O.Ms.No.35 Finance and Planning, dated 27-02-1997 and in terms of the same fixed @ Rs.1.50 Paise per square feet. Petitioner herein made a representation on 20-07-1998 and the office of the District Collector, Warangal vide D.Dis.No.H2/D3/9952/97, dated 17-06-1999, addressed to the 4th respondent, informed fixation of rent @ Rs.2200/- with effect from 01-12-1993.

As against the said fixation, the 1st petitioner herein filed appeal before the Commissioner of Prohibition and Excise – 1st respondent herein and the 1st respondent herein vide Cr.No.3505/2007/CPE/C6, dated 03-02-2009 passed an order, according permission for enhancement of rent by 5%

i.e., from Rs.2807/- to Rs.2947/- with effect from 01-12-2007. The said order of 1st respondent, dated 03-02-2009 and applicability of G.O.Ms.No.35 Finance and Planning, dated 27-02-1997 and fixation of rent @ Rs.2200/- per month are under challenge in the present writ petition.

A counter-affidavit deposited by the 5th respondent is filed.

Heard, learned counsel for the petitioners and learned Government Pleaders appearing for respondents.

According to the learned counsel for the petitioners, the respondents grossly erred in applying G.O.Ms.No.35 Finance and Planning, dated 27-02-1997 and it submitted by learned counsel that the said Governmental Order cannot be given retrospective effect as the respondents herein entered into possession of the subject property on 01-12-1993 and the 4th respondent – Executive Engineer fixed the rent @ Rs.3300/- per month.

On the contrary, it is submitted by learned Government Pleaders appearing for respondents that there is no illegality nor there exists any procedural infirmity in the impugned action and strictly adhering to the orders issued by the State Government from time to time the rent fixation has been made, as such, the action impugned is not amenable for any

interference of this Court under Article 226 of the Constitution of India.

There is absolutely no dispute with regard to the reality that the 6th respondent herein entered into the possession of the property on 01-12-1993 and admittedly the respondents herein did not fix the rent till the year 1999 by way of proceedings of the District Collector, dated 17-06-1999, wherein the District Collector fixed the rent @ Rs.2200/- per month.

It is the categorical case of the petitioner herein that the 4th respondent – Executive Engineer after duly taking into consideration the relevant instructions prevailing at the relevant point of time fixed the rent @ Rs.3300/- per month and G.O.Ms.No.35 Finance and Planning, dated 27-02-1997 cannot be applied to the instant case as the 6th respondent herein entered into possession of the property long prior to the issuance of the said Governmental Order.

Earlier, the petitioner herein filed W.P.No.15579 of 1999 before this Court questioning the said order, dated 17-06-1999 and in the said writ petition the petitioner herein also disputed the applicability of the orders issued by the said Government vide G.O.Ms.No.35 Finance and Planning, dated 27-02-1997. The said writ petition was dismissed on

23-08-1999 keeping it open for the 1st petitioner herein to approach the competent authority.

According to the petitioners, the 1st petitioner filed appeal before the 2nd respondent – Commissioner of Prohibition and Excise on 08-08-2007. On the said appeal, the 2nd respondent herein vide proceedings vide Cr.No.3505/2007/CPE/C6, dated 03-02-2009 passed an order, according permission for enhancement of rent by 5% i.e., from Rs.2807/- to Rs.2947/- with effect from 01-12-2007 obviously, without going into the point raised by the 1st petitioner as to the applicability of G.O.Ms.No.35 Finance and Planning, dated 27-02-1997.

It is the categoric submission of learned counsel for the petitioners that since the transaction took place long prior to the issuance of the said G.O.Ms.No.35 Finance and Planning, dated 27-02-1997 the contents of the said G.O. cannot be made applicable to the case of the petitioners herein.

Evidently, the said aspect was not considered by the 2nd respondent – Commissioner while passing the orders on the appeal filed by the 1st petitioner herein. Therefore, in the facts and circumstances of the case it may be appropriate to remand the matter to the 2nd respondent for appropriate decision in the light of the observations made supra.

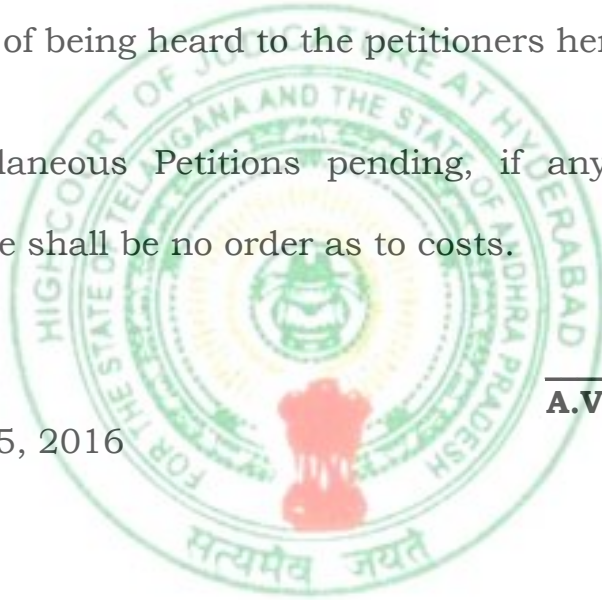
For the aforesaid reasons, the writ petition is disposed of, remanding the appeal filed by the 1st petitioner herein on 08-08-2007 to the 2nd respondent and the 2nd respondent is directed to pass appropriate orders on the said appeal preferred by the 1st petitioner herein against the orders of District Collector vide D.Dis.No.H2/D3/9952/97, dated 17-06-1999, within a period of two (2) months from the date of receipt of a copy of this order, after giving notice and opportunity of being heard to the petitioners herein.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

December 05, 2016

Pn

A.V. SESA SAI, J



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