

IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF TELANGANA
AND ANDHRA PRADESH AT HYDERABAD

FRIDAY THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION NO. 1032 OF 2007

Between:

Abdul Ghani

...

Petitioner

V/s.

Andhra Pradesh State Wakf Board
Represented by its Chief Executive Officer,
Nampally, Hyderabad & Ors.

...

Respondents

Counsel for Petitioner

:

Sri P. Venugopal

Counsel for Respondents :

Sri M.A.K. Mukheed for R-1
Sri R.Vinod Reddy for R-2
GP for Home for R-3
GP for Revenue for R-4

The court made the following :

[order follows]

HONOURABLE SRI JUSTICE P. KESHA RAO**WRIT PETITION NO. 1032 OF 2007****ORDER:**

Heard the counsel for the petitioner as well as the respondents.

2. The present writ petition is filed questioning the action of the officials of the second respondent together with the respondents 3 and 4 in demolishing the property partly bearing Municipal H.No.6-3-775/8, J.L. Colony, Punjagutta, Hyderabad, as arbitrary and illegal apart from violation of the principles of natural justice, since no notice has been issued to him before resorting to demolition of the structure.

3. The case of the petitioner is that originally one Mr.Babu Rao was the tenant of the subject property with the first respondent – Board. However, the petitioner has taken the mulgi bearing Municipal H.No. 6-3-775/8 from Babu Rao by paying monthly rent of Rs.360/- and he was running his business. Since he was in continuous possession of the above said mulgi since his childhood he submitted an application dated

25/10/2005 requesting the first respondent to transfer the tenancy in his favour. Pursuant to the said application, the first respondent has issued a Memo.No. 5824/R-4/Rent/Hyd/97-supply, dated 16/12/2005 asking the petitioner to remit non-refundable deposit of Rs.70,000=00 for consideration to transfer the tenancy from Mr.Babu Rao and transfer the tenancy in his favour on a monthly rent of Rs.1,000=00. Accordingly, the said amount was deposited and he is continuing his possession and enjoyment of the same. However, on 17/01/2007 at 04:00 a.m., the officials of respondents 2 and 4 came to the site along with Punjagutta Police and started demolishing the same. In those circumstances, the present writ petition is filed questioning the arbitrary action of respondents 2 and 4.

4. During the course of hearing, on 01/5/2007, this Court passed the following orders :

“ After hearing the learned counsel for the petitioner and learned Standing Counsel for the concerned respondent, this Court is of the view that the respondents did not follow the procedure prescribed by law, before the property was resumed from the petitioner. Taking the totality of the circumstances into account, it is directed that the A.P. Housing Board shall earmark an extent of 300 sq.yards, on one side of the property in question, to enable the petitioner to carry on repairing operations. It is directed that the

petitioner shall not bring about any construction on the plot so allocated. This arrangement is purely tenantive and it shall not give rise to any equities or rights in favour of the petitioner, and shall be in force for a period of two months from today.”

5. It is contended by the counsel for the petitioner that in pursuance of the said order the petitioner is continuing his possession over the area allotted to him. The counsel for the petitioner also would contend that for arguments sake even if he is in illegal possession, he is entitled for a notice. Coming to the facts of the present case, it is said that no notice is issued to the petitioner before demolishing the structure existing in the said property. Even though the second respondent has a claim over the subject property, the second respondent has to resort to due process of law by way of issuing a notice to the second respondent. But, it cannot take law into their hands and evict a person, who is in lawful possession by virtue of entering into a lease agreement with the first respondent-board. The contents of the affidavit filed in support of the writ petition and the counter-affidavit filed on behalf of respondents would show that the property belongs to the second respondent – board.

6. Per contra, the first respondent filed a counter-affidavit claiming that subject property belongs to the Wakf Board. However, a counter-affidavit is filed on behalf of the second respondent Board contending that it has purchased the subject land for Rs.75,000/- as per the award and took possession on 15/11/1956 by the Collector, Hyderabad. The fourth respondent also filed a counter-affidavit to the effect that the subject-property belongs to the second respondent-Board. Thus, in the light of the rival contentions raised by the first respondent on one hand and the second respondent and fourth respondent on the other hand, it appears that there is a dispute with regard to the ownership over the subject property. In that event, when the petitioner is paying the lease amount to the first respondent – Wakf Board under a lease agreement, without ascertaining the ownership or title, it cannot be said that the second respondent – Housing Board is the owner of the property. The said question cannot be decided in the present writ petition under Article 226 of the Constitution of India. That apart, when

once the petitioner is in possession, he cannot be dispossessed without issuing any notice which is in violation of the principles of natural justice.

7. In these circumstances, the writ petition is allowed, directing the second respondent – A.P. Housing Board to issue notice to the petitioner calling for his explanation and after considering the same orders may be passed and in the event the subject property belongs to the second respondent-Board, it is open to the second respondent to take steps available under law for taking possession of the subject property/ Till such time, the possession of the petitioner in respect of the subject property cannot be disturbed and no coercive steps shall be taken against the petitioner.

8. With the above direction, the writ petition is allowed. There shall be no order as to costs.

9. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stands closed.

JUSTICE P. KESHA RAO.

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION NO. 1032 OF 2007
{ ALLOWED }



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