

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.18761 OF 2012

ORDER:

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

“to issue a Writ, order or direction, especially one in the nature of Writ of Mandamus declaring the action of the officers of the 2nd respondent to demolish the premises bearing D.No.28-1-39 Main Road, Kakinada, in the occupation of Lakshmi Silk House, without issuing notice is illegal, arbitrary, violative of Principles of Natural Justice and Secs.146 and 147 of G.H.M.C. Act, 1955 and consequently direct the 2nd respondent or its officers not to resort to any illegal demolition and pass such other orders as are deemed fit and proper.”

2. It is stated in the affidavit filed in support of the writ petition that the petitioner is the Proprietor of M/s.Lakshmi Silk House and he has been carrying on the said business in the premises bearing D.No.28-1-39, Main Road, Kakinada for the last sixty years. One Bavirisetty Simhachalam, the grandfather of respondent No.3, was the owner of the premises. On his demise, the property devolved upon the father of respondent No.3 and later, to respondent No.3. During the lifetime of Sri Simhachalam, the property was leased out to him under an oral lease and as on today, the rent to the premises is Rs.7,000/- and the same is being paid by way of cheques. While so, the staff of respondent No.2 came to the said shop on 13.06.2012 and tried to demolish the front portion of the shop and the same was resisted. On enquiry, he came to know that respondent No.2 authorities issued notice to respondent No.3,

being the owner of the property, offering him to give T.D.R. No notice was issued to the petitioner being the tenant of the premises. Respondent No.2 and its officers ought to have issued notice to the petitioner also. Without issuing any notice, in collusion with respondent No.3, respondent No.2 authorities tried to demolish the premises illegally on 13.06.2012. Hence, he filed the present writ petition.

3. Heard and perused the material available on record.

4. Learned counsel for the petitioner produced a copy of the judgment of this Court reported in **Ushodaya Publications, Hyderabad v. Commissioner, Municipal Corporation of Hyderabad and another**¹ wherein it is held at para No.10 as under:

“The 1st respondent is a statutory authority. Its right to take possession of the land, therefore, must be exercised within the four corners of the statute. It is one thing to say that the provisions laid down under the said Act for acquiring the land are not required to be taken recourse to as the owner thereof has granted consent but the same would not mean that the lessee’s consent need not be taken. There cannot be any doubt whatsoever that the said consent granted by the owner would not be binding upon the lessee and in that view of the matter the 1st respondent had no right to take forcible possession of the land in question, relying on the purported consent obtained by it from the petitioner’s lessor without taking recourse to the provisions of the Land Acquisition Act as thereby the petitioner shall be deprived of its own valuable right. The 1st respondent, in our considered opinion, deprived the petitioner of the said right without taking recourse to law....”

From a perusal of the above decision, it is evident that whenever the Corporation intends to acquire a property for any purpose,

¹ 2001 (3) ALD 173 (FB)

necessarily, notice has to be issued to the tenant even though consent was given by the owner of the property. In view of the same, this Writ Petition is disposed of with the following direction:

If respondent No.2 Corporation intends to acquire the property in question, it shall issue notice to the petitioner herein and then, proceed with the land acquisition proceedings in accordance with law. There shall be no order as to costs.

5. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

11.04.2017
AMD



JUSTICE RAJA ELANGO

THE HONOURABLE SRI JUSTICE RAJA ELANGO



WRIT PETITION No.18761 OF 2012

Date: 11.04.2017

AMD