

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.455 OF 2017

JUDGMENT: (Per Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This Appeal, under clause 15 of Letters Patent, is preferred against the order passed by the learned Single Judge in Writ Petition No.9422 of 2017 dated 23.03.2017. The appellants herein are the petitioners in the writ petition which was filed challenging the proceedings dated 10.02.2017, issued by the respondents under Section 5 of the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968 (for short, 'the Act'), directing eviction of the petitioners. The petitioners are all tenants of various shops in the Night Bazaar adjacent to Shilparamam. They were granted lease of the subject shops for a period of three years which expired in 2014 in respect of some leases, and in 2015 in respect of some others.

Before the learned Single Judge it was contended that notices were issued on 03.12.2016, and eviction orders were passed on 30.12.2016; the petitioners had approached the appellate authority under Section 9 of the Act; stay orders were granted on 27.01.2017; the eviction proceedings were withdrawn by letter dated 09.02.2017; and, on the very next day *i.e.*, 10.02.2017, the impugned order was passed under Section 5 of the Act without giving the petitioners an opportunity of being heard.

It is the petitioners' case that, while the notices issued to them earlier on 03.12.2016 had resulted in an eviction order being passed on 30.12.2016 which was withdrawn, the action of the respondents in withdrawing the order of eviction obligated them to issue a notice afresh to the petitioners, before passing the eviction order dated 10.02.2017. On

the other hand, it was contended by both the learned Assistant Government Pleader for Revenue, and Smt. K.Udaya Sri, learned Standing Counsel for respondent No.3, that, as certain amounts were due towards lease and other amenities, the procedure prescribed under the Act was followed which was questioned in W.P. No.43115 of 2016; no stay was granted by the Court in the said Writ Petition; the authorities were only directed to consider the representations, and pass orders; without paying the amounts due, one of the petitioners had filed O.S. No.165 of 2016 and I.A. No.329 of 2016 for grant of injunction; I.A. No.329 of 2016 was dismissed on 15.12.2016; instead of paying the rent, admittedly due, the petitioners were filing one writ petition after another; the lease in favour of the petitioners expired in May, 2015; and though this Court had passed an *interim* order in W.P. No.12594 of 2015, for payment of arrears towards amenities and rent, the admitted amounts were not deposited by the petitioners.

In the order under appeal, the learned Single Judge noted that it was not in dispute that the petitioners had not paid the admitted amounts even by the date of expiry of the leases in May, 2015; different premises were allotted to the petitioners, and different eviction orders were passed, despite which a common writ petition was filed; and the petitioners had an alternate remedy under Section 9 of the Act to question the impugned order. The learned Single Judge, while dismissing the writ petition on these grounds, also observed that the conduct of the petitioners did not entitle them to the extraordinary equitable jurisdiction under Article 226 of the Constitution of India and, accordingly, dismissed the writ petition with exemplary costs of Rs.10,000/- each.

The fact that the leases, granted to the petitioners, expired several years ago is not in dispute. The detailed statement, filed by the respondents and which is enclosed as part of the material papers filed along with this appeal, shows that a sum in excess of Rs.56 lakhs is due towards rent and electricity charges from the tenants of the Night Bazaar upto December, 2016. It is not even the case of the appellants-writ petitioners that these amounts have been paid even as on date. The only contention urged is that, since the earlier eviction order was withdrawn, a fresh notice ought to have been issued. The fact, however, remains that, while the earlier notice dated 03.12.2016 which formed the basis for passing of the order on 10.02.2017 was questioned in W.P. No.43115 of 2016, this Court had refused to interfere with the said notice, and had only directed the respondents to consider the petitioners' representation. Since it is only the eviction order which was subsequently withdrawn, the respondents are not precluded from passing a fresh eviction order based on the earlier eviction notice dated 03.12.2016 which continued to remain in force.

The petitioners claim violation of principles of natural justice, and that they were not given an opportunity of being heard. When we asked the learned counsel for the petitioner what reasons the petitioners intended putting forth in seeking to restrain the respondents from evicting them, the only submission put forth, by Sri P.Rama Sharana Sharma, learned counsel for the appellants-writ petitioners, is that the gate between "Shilparamam" and the "Night Bazaar" was closed resulting in a drastic reduction in the number of people visiting the Night Bazaar. The dispute, if any, regarding closure of the gate would not justify the appellants-writ petitioners continuing to remain in occupation of the premises, long after expiry of lease period, that too without paying rent or electricity charges.

The order of the learned Single Judge does not suffer from any error, much less a patent illegality, necessitating interference in an intra-Court appeal under Clause 15 of the Letters Patent. As the respondents have already taken possession of the subject premises, pursuant to the order passed by the learned Single Judge, suffice it to direct the respondents to hand over the stocks, seized by them thereafter, to the appellants-writ petitioners as soon as they approach the authorities and request the stocks to be handed over to them. It is made clear that return of the stocks shall not preclude the respondents from taking action, in accordance with law, for recovery of the amounts due to them, from the appellant-petitioners, towards rent and electricity charges.

Sri P.Rama Sharana Sharma, learned counsel for the appellants-writ petitioners, would request that costs, imposed on the petitioners by the learned Single Judge, be set aside. While the learned Single Judge was, no doubt, justified in imposing costs on the appellants-writ petitioners for their having invoked the extraordinary jurisdiction of this Court without even paying the lease rent and electricity charges, we consider it appropriate to reduce the costs imposed by the learned Single Judge from Rs.10,000/- to Rs.5,000/- for each petitioner, which shall be paid to the respondents within four (4) weeks from today.

Subject to the aforesaid observations, the appeal fails and is, accordingly, dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 12-04-2017.
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(Judgment of the Division Bench delivered by
Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Date.12-04-2017

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