

**\* HON'BLE SRI JUSTICE CHALLA KODANDA RAM**  
**+ WRIT PETITION Nos.13635; 13636; 13649 and 13466 OF 2017**  
**% 21<sup>ST</sup> April, 2017**

**W.P.No.13635 of 2017**

# Satish Chandra Joshi

... Petitioner...

AND

\$ Greater Visakhapatnam Municipal Corporation,  
Visakhapatnam and two others.

... Respondents...

**W.P.No.13636 of 2017**

# Gullipilli Govinda Rao

... Petitioner...

AND

\$ Greater Visakhapatnam Municipal Corporation,  
Visakhapatnam and two others.

... Respondents...

**W.P.No.13649 of 2017**

# Sunil Kumar Joshi

... Petitioner...

AND

\$ Greater Visakhapatnam Municipal Corporation,  
Visakhapatnam and two others.

... Respondents...

**W.P.No.13466 of 2017**

# Sri Lakamsani Nageswara Rao

... Petitioner...

AND

\$ Greater Visakhapatnam Municipal Corporation,  
Visakhapatnam and two others.

... Respondents...

! Counsel for the Petitioners

: Sri K. Sarvabhouna Rao  
and Sri G. Rama Gopal

^ Counsel for the respondents 1 & 2

: Sri S. Lakshminarayana Reddy  
Standing Counsel for Corporation.

^ Counsel for the 3<sup>rd</sup> respondent

: Government Pleader for  
Municipal Administration (AP)

< Gist:

> Head Note:

? Cases referred:

- 1) (2010) 4 SCC 653
- 2) (2004) 12 SCC 278
- 3) (1974) 4 SCC 396

**THE HONB'E SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION Nos.13635; 13636; 13649 and 13466 OF 2017**

**COMMON ORDER:**

The petitioners in all the writ petitions are individuals who have established canteen/shops in Visakhapatnam Beach road and were licensed to carry on the trade in the premises allotted by the first respondent Municipal Corporation, Visakhapatnam. On expiry of the license period, 1<sup>st</sup> respondent requested the petitioners to vacate the area for the purpose of beautification of the beach front and on their refusal, the 1<sup>st</sup> respondent initiated proceedings invoking the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, "the Central Act"). The designated authority made orders holding that the petitioners as unauthorized occupants and consequently passed orders for their eviction. The orders were appealed to by the petitioners before the learned Principal District Judge, Visakhapatnam which came to be dismissed. The orders of dismissal made in each of the petitioner's case are challenged in the present writ petitions.

Though orders passed are in different appeals, the facts and legal contentions raised in the appeals are identical and further the grounds raised in these writ petitions are also similar and in such circumstances these writ petitions are being disposed of by a common order.

For the purpose of clarity the facts in W.P.No.13635 of 2017 can be referred to. A scheduled property of 10/10 vacant site was leased out in favour of the petitioner to put up kiosk for running business under the name and style of "Sea View Snack

Bar” with specific boundaries. Initially the license was granted in the year 1991 and the same was renewed from time to time and the last renewal being in the year 2008 and the license period being valid up to 2011. It is an admitted fact that the lease/license was not renewed after 2011. Initially Petitioners were issued notice in 2012 to vacate the premises stating that the area is required for the beautification project that was being undertaken. Petitioners approached the civil courts by filing O.S.Nos.465 of 2012 and obtained temporary injunction and the said suit is pending. Thereafter a legal notice dated 30.06.2014 was issued by the Corporation terminating the tenancy once again the petitioners approached the Civil Courts by filing O.S.No.1029 of 2014 and obtained temporary injunction which was made absolute in I.A.No.362 of 2014 by order dated 10.02.2015. Thereafter, the 2<sup>nd</sup> respondent had issued a notice dated 03.09.2015 invoking Section 3(A) of the Central Act, requiring the petitioners to vacate the scheduled premises as the petitioner is in unauthorized occupation of the premises even after the expiry of the lease by 31.03.2011. Further, the premises are required for beach beautification project already taken up in the public interest. Fifteen days time was granted for reply to the notices why eviction orders shall not be made. Petitioners raised their objections by letter dated 18.09.2015. In reply, petitioners contended the following:

- i) That the petitioners are regular in payment of the rents and there are no arrears.
- ii) Petitioner is not an unauthorized occupant and thus not an encroacher as defined under the Public Premises Act and as such the invocation of Act has no application.

- iii) The order in O.S.No.1029 of 2014 by the competent civil court is subsisting and he shall not be dispossessed/evicted except by following due process of law. Further the matter is subjudice.
- iv) The respondent corporation is accepting the rents and continued to accept the same and as such petitioner prayed for withdrawal of the notice.

The 2<sup>nd</sup> respondent Estate Officer after considering the explanation submitted by the petitioners, passed the eviction orders on 28.10.2015 holding that the petitioners are unauthorized occupants of the premises with a direction to evict them from the scheduled premises. Challenging the said order, Appeal Suit No.179 of 2015 was filed under Section 9 of the Central Act before the Principal District Judge, Visakhapatnam. The appeal was dismissed by an order dated 23.02.2017. It may be noted with respect to other writ petitioners similar orders were made in Appeal Suit Nos.182; 175 and 180 of 2015 on the file of learned Principal District Judge at Visakhapatnam, corresponding to W.P.Nos.13636; 13649 and 13466 of 2017.

The orders passed in the said appeals are challenged in the present writ petitions raising the following grounds:

1) The proceedings initiated invoking the provisions of the Central Act has no application as the scheduled premises does not fall within the definition of public premises as defined in Section 2(e) of the Central Act.

2) The proceedings issued by the Estate Officer of the respondent corporation dated 03.09.2015 invoking the provisions under Section 3(A) of the Central Act, has no application to the present case.

3) The provisions of the Central Act invoked by the Estate Officer is made applicable to the premises of the Central Government, but not for the public premises of Andhra Pradesh. The Estate Officer has no jurisdiction to invoke any provisions of the Central Act and not the competent or notified authority under the provisions of the Central Act.

4) There is no similar provision of Section 3(A) of the Central Act for issuance of notice to evict the unauthorized occupants.

5) The Estate Officer failed to consider and give much weight to the orders, passed by the learned I Additional Senior Civil Judge, Visakhapatnam.

6) The Estate Officer failed to appreciate that the appellant herein has not committed any default in payment of the monthly rents to the subject matter of the schedule premises.

7) The Estate Officer failed to consider the explanation submitted by the petitioner on 18.09.2015 and simply ignored without giving any proper reasons.

8) The appellate authority failed to appreciate the scope and application of both the Acts. However, the appellate authority had not met the substantial ground in the appeal which goes to the inherent lack of jurisdiction of the 2<sup>nd</sup> respondent in initiating against the petitioner under the provisions of the Central Act.

9) The Jual relationship of Tenant and Landlord has been admitted by the Corporation by issuance of a notice dated 28.05.2014 under Section 106 of the Transfer of Property Act (in

short "T.P. Act"). After issuance of the notice dated 28.05.2014, the 1<sup>st</sup> respondent Corporation continued to receive the rents without any demur or protest and hence the petitioners continued to be tenants holding over consequently the Jua relationship is continued under the provisions of T.P. Act. In those circumstances, the observations of the Appellate Authority by referring to the definition of "Unauthorized Occupation" under Section 2(g) of the Central Act has no application and consequently the 2<sup>nd</sup> respondent has no inherent jurisdiction to initiate the proceedings under the provisions of the Central Act. In that view of the matter order dated 28.10.2015 of the 2<sup>nd</sup> respondent as confirmed by the appellate authority by order dated 23.02.2017, is arbitrary and without lawful authority or jurisdiction.

Heard Sri K. Sarvabhuma Rao and Sri G. Rama Gopal for the petitioners and Sri S. Lakshminarayana Reddy for the respondent Corporation.

At the outset, it may be noted that the petitioners have invoked the 'Certiorari' jurisdiction of this court to challenge the orders of the learned Principal District Judge, Visakhapatnam. The scope of interference in exercise of the 'Certiorari' jurisdiction by this Court is limited to the cases where there is a total lack of inherent jurisdiction of the lower Tribunal in making an order and violation of principles of natural justice. In the case on hand, petitioners neither pleaded nor argued any violation of principles of natural justice. Though raised large number of grounds in the pleadings, the sum and substance of the argument of the learned counsel for the petitioners is limited to the improper exercise of the

jurisdiction by the 2<sup>nd</sup> respondent-Estate Officer and non-appreciation of the said aspect by the appellate authority-learned Principal District Judge, Visakhapatnam. The principal contention of the learned counsel is that the 2<sup>nd</sup> respondent has invoked the provisions of Section 3-A of the Central Act, whereas, he is an officer under the Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1968 (hereinafter referred to as “State Act”).

The fact that 2<sup>nd</sup> respondent in his notice and order had referred to the provisions of Central Act is not in dispute. It may also be noted that in the reply submitted by the respective parties, there is no specific objection raised to the effect that 2<sup>nd</sup> respondent being an officer in a State organization had wrongfully invoked the provisions of Central Act. The only objection with respect to the jurisdiction of the 2<sup>nd</sup> respondent raised in the reply submitted by all the petitioners is –

“I state that, at the outset the provisions invoked by your authority under the public premises act, is not applicable to the present case as I am not an unauthorized occupant and not an encroacher and as envisaged under the Act.”

However, before the learned District Judge in appeal this aspect was specifically raised and argued and the same has been dealt with by the learned District Judge. The appellate authority having considered the said aspect, though not expressed in clear terms, had come to the conclusion that under the State Act the 2<sup>nd</sup> respondent was empowered to issue notice and determine the status of the petitioner and authorized to make an order and in that view of the matter, the learned District Judge did not find any

illegality or irregularity in the order made by the 2<sup>nd</sup> respondent. The learned District Judge had referred to the provisions of Central Act and the State Act and found that the case falls within the scope of the State Act. Reference has been made to Section 3-A of the Central Act and Sections 3 and 4 of the State Act apart from Section 2(h) of the State Act.

It may be noticed that both in Central Act as well as in the State Act there are identical provisions except that there were some additions made by way of amendment in the Central enactment. One of the amendments being introduction of Section 3-A of the Central Act providing for eviction even from temporary occupation. However, the definition of 'unauthorized occupation', the procedure governing issuance of notice and the powers of Estate Officer are all *in pari materia*. The procedure governing conducting of enquiry and passing of orders is contained in Sections 4 and 5 of both the Acts, while powers of Estate Officer are set out in Section 8 of Central Act. In other words, though a wrong provision has been referred to by the Estate Officer it cannot be said that the Estate Officer lacked inherent jurisdiction to make the impugned orders. This aspect of the matter was the one which has been addressed by the appellate Court-learned Principal District Judge, Visakhapatnam. It is well settled that mere reference or quoting a wrong provision in law by an authority, if otherwise having jurisdiction does not invalidate either the proceedings or the orders made by such authority. Reference may be made to the judgments of the Supreme Court in **Mohd.**

**Shahabuddin v. State of Bihar<sup>1</sup>; N. Mani v. Sangeetha Theatre<sup>2</sup>**  
and **H.L. Mehra v. Union of India<sup>3</sup>.**

It may be noted that while granting injunction in favour of the petitioners, learned Senior Civil Judge had held that the petitioner is required to be protected from eviction without following due process. In the facts of the present case, it is not in dispute that the lease / license granted in favour of the petitioners has expired as far back as in 2011 and in terms of the Section 2(g) of the State Act, petitioners are to be held to be in unauthorized occupation. For better appreciation, the definition of 'unauthorized occupation' may be noticed. Section 2(g) of the Central Act reads as under:-

“ “Unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.”

In other words, the proceedings initiated by the 2<sup>nd</sup> respondent, though quoting wrong provisions, are within his jurisdiction or within the inherent powers vested in him and valid and legal. Confirmation of the orders of the 2<sup>nd</sup> respondent by the Appellate Tribunal, under the Act not liable to be interfered with in exercise of 'Certiorari' jurisdiction of this Court.

The facts, law and all other aspects being identical in other writ petitions, the order and reasoning in W.P.No.13635 of 2017

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<sup>1</sup> (2010) 4 SCC 653

<sup>2</sup> (2004) 12 SCC 278

<sup>3</sup> (1974) 4 SCC 396

would equally apply to the cases in W.P.Nos.13636, 13649 and 13466 of 2017. In those circumstances, these writ petitions are dismissed with costs of Rs.5,000/- in each case, payable by the petitioners to the respondent-Corporation. Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed.

**CHALLA KODANDA RAM, J**

Date:21.04.2017,

Note: Mark LR copy and issue C.C. by Monday.

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Gk/Ssv.

After pronouncement of the order, learned counsel for the petitioners pleaded that if reasonable time is granted to the petitioners to make alternative arrangements to move out their establishments, they will do so and prayed for granting of three months to vacate the premises.

Considering the fact that the petitioners' lease was expired in the year 2011 itself, however, they continued to stay on obtaining injunction orders from the civil courts and the eviction orders also came to be passed in the year 2015 and further considering that the eviction was sought by the respondents corporation for beautification of the beach front, three months time was prayed for by the petitioners, cannot be granted. But, one month time would be reasonable. In those circumstances, the respondents shall allow the petitioners to vacate and hand over the vacant possession of the shops on or before 31.05.2017 subject to condition of their paying usual charges.

**CHALLA KODANDA RAM, J**

Dtate:21.04.2017.