

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.682 of 2016 in WPMP.No.48716 of 2015 in
WP.No.37868 of 2015

And

WP.No.37868 of 2015

COMMON ORDER :

Heard the counsel for petitioners, and the learned Government Pleader for Irrigation, for respondents.

2. In this Writ Petition, the petitioners have assailed the action of respondents in trying to evict the petitioners from their respective houses / shops located in Bazaar Area, L.M.D. Colony, Thimmapur Mandal, Karimnagar District, by issuing eviction orders dt.21.09.2015 and 19.09.2015 without any prior show-cause notice.

3. The petitioners contend that they were originally residents of L.M.D. Colony, Thimmapur Mandal, Karimnagar District, that their lands and properties were acquired by the respondents for the purpose of Lower Manair Dam Reservoir, Karimnagar; that since they lost their lands and houses and are shelterless, in the year 1983, the respondents allotted open plots to them in Survey No.481 of L.M.D. Colony for shelter and for establishing small businesses at Bazaar Area, L.M.D. Colony on a nominal rent of Rs.4 per Square Yard; that they have constructed temporary and *pucca* houses and shops for which the Gram Panchayat had assigned house numbers, and have also obtained water connection and electricity connections and residing there for 32 years; that they applied to the Government on

17.01.2015 for regularization of the house-sites in their occupation as per G.O.Ms.No.58 Revenue (Assignment-I) Department dt.30.12.2014, through the 5th respondent, and the said applications are pending consideration; and that the impugned orders have been issued straightaway canceling the allotment made to them treating it as a lease, and they were asked to vacate within (45) days; and that the same three grounds were mentioned in each of the impugned orders as under :

“1. Grantee shall not transfer to any other person but you have subleased to third party;

2. Grantee shall not except as provided in condition erect any buildings, fences or structures neither permanent nor temporary structure on the land without the previous written sanction of the assigning authority but you have constructed temporary structures.

3. Grantee shall not occupy the excess of area rather than allotted but you have occupied the excess land.”

4. The petitioners further contend that the particulars of the sub-letting or the nature of construction erected by each of the petitioners or alleged occupation of excess land by each of the petitioners were not mentioned, and non-mentioning of these particulars also vitiates the impugned orders.

5. On 20.11.2015, in WPMP.No.48716 of 2015 in WP.No.37868 of 2015, this Court granted interim direction granting stay of eviction of the petitioners on the ground that there was no proper notice issued to them.

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6. WVMP.No.682 of 2016 is filed to vacate the order dt.20.11.2015 passed by this Court in WPMP.No.48716 of 2015 in WP.No.37868 of 2015.

7. In the counter-affidavit / vacate stay petition, it is not denied by the respondents that particulars of the alleged violation of terms of the lease or allotment were not mentioned in the impugned orders. It is also not denied that there was no prior notice given to the petitioners before passing the said orders. Though some details were mentioned in the counter-affidavit, it is settled law as held in **Mohinder Singh Gill v. Chief Election Commissioner**¹ that the correctness of a public order is to be judged on its contents, and the same cannot be supported by counter-affidavits filed subsequently.

8. Therefore, it is not permissible for the respondents to support the eviction orders passed against the petitioners on the basis of the counter-affidavit filed in the Writ Petition.

9. It is also pertinent to note that though a lease is pleaded by respondents to each of the petitioners, no copy of any such lease deed granted to petitioners way back in 1971 or 1972, is produced.

10. In this background, the impugned orders deserve to be set aside on the ground of gross violation of principles of natural justice.

¹ AIR 1978 SC 697

11. Accordingly, WVMP.No.682 of 2016 in WPMP.No.48716 of 2015 in WP.No.37868 of 2015 is dismissed.

12. The Writ Petition is allowed, and the respondents are directed not to evict the petitioners without following due process of law by giving proper notices to each of the said petitioners with specific details about the allegations, giving the petitioners four (04) weeks' time to give explanations to such allegations, and then pass reasoned orders. This will also not preclude the respondents from considering petitioners' applications for regularization under G.O.Ms.No.58 Revenue (Assignment-I) Department dt.30.12.2014 favourably in favour of petitioners.

13. Accordingly, the Writ Petition is allowed. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14.02.2018

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