

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.3927 of 2009

ORDER:

The unsuccessful appellant firm preferred this writ petition, under Article 226 of the Constitution of India, assailing the order, dated 24.02.2009, of the learned Chief Judge, City Civil Court, Hyderabad, passed in CMA.No.11 of 2009, whereby the learned Chief Judge while dismissing the said CMA confirmed the order, dated 17.01.2009, of the Competent Authority – South & Central Divisions, A.P. Housing Board, Hyderabad, in Case No.36/CA1/2008.

2. I have heard the submissions of Sri V. Sree Ranga Rao, learned counsel appearing for the writ petitioner, and of Sri D. Ranganatha Kumar, learned standing counsel for APHB appearing for respondents 1 & 2. I have perused the material record.

3. The case of the writ petitioner and the submissions made on its behalf are as follows: -

The petitioner firm is in possession of the subject premises. Under an exchange arrangement, the premises bearing No.16/2/W and 19/E MJ Road, Hyderabad, was exchanged for the subject premises bearing No.26-W, and the said subject premises/property was taken possession at the request of the respondents herein, with effect from 21.05.1970. Earlier, the lease was given by P.W.Department. Having come into possession of the subject premises, the petitioner is regularly paying the rents. While so, the respondents sought eviction of the petitioner on the grounds that the petitioner failed to pay rents and that there are arrears of rent and that the subject premises is required for

public purpose; and, accordingly, an eviction case was filed before the Competent Authority. The said case was allowed and eviction was ordered. However, a Civil Miscellaneous Appeal preferred by the petitioner was allowed by the II Additional City Civil Court. The said order in the said appeal has become final. While so, the LAO of the Board issued a notice, dated 24.07.2008, requesting the petitioner to vacate the premises to enable the respondents to construct a commercial complex on the subject land. Thereafter, the Asst., Estate Officer – 2nd respondent issued Form A notice requesting the petitioner to vacate the premises. Without giving an opportunity to the petitioner, the subject case was registered showing the 2nd respondent as petitioner and the writ petitioner herein as the respondent. The Competent Authority passed the impugned orders directing the petitioner to vacate the premises. Aggrieved thereof, the petitioner preferred CMA.No.11 of 2009 before the learned Chief Judge, City Civil Court, Hyderabad. By the order, dated 24.02.2009, which is also impugned in the writ petition, the learned Chief Judge, while dismissing the said appeal of the petitioner, confirmed the order of the Competent Authority. Aggrieved thereof, the petitioner preferred this writ petition. The Competent Authority, which is the primary authority, has not given an opportunity to the writ petitioner to file its counter. The writ petitioner could not file its counter before the Competent Authority on the date fixed for filing counter. After the matter was reserved for orders/judgment by the Competent Authority, the counsel for the writ petitioner filed an application, on 15.01.2009, requesting to allow the writ petitioner to file counter. However, without considering the said application, the Competent Authority passed orders of eviction and the said orders were

confirmed by the learned Chief Judge. The learned Chief Judge failed to consider the fact that the order of the Competent Authority was passed without affording an opportunity to the writ petitioner to file counter. The Competent Authority is bound under law to afford an opportunity to file counter with the objections of the writ petitioner, who is the occupant of the subject premises. No material is placed before the Competent Authority or the Court below to show that the premises is required for construction of commercial complex and that the necessary procedure for proceeding with the construction of complex was followed as required under Chapter III of the Act. The order of the Competent Authority is a one sided order and is one passed against principles of natural justice. The learned Chief Judge erroneously dismissed the appeal of the writ petitioner. The authority which issued the notice itself passed the final order. The learned Chief Judge ought to have remanded the matter to the Competent Authority with a direction to take the counter on record and pass orders afresh. Or in the alternative, the learned Chief Judge ought to have received the counter and ought to have considered the objections of the petitioner. Since 1970 onwards, the petitioner is carrying on business and its partners are eking out their livelihood on the said business. Even though earlier attempts to seek eviction had failed, the present fresh eviction case was initiated and eviction order was obtained. The present case is, therefore, barred by *res judicata*. Earlier there was an offer to sell to the lessee, the land over which the subject premises is situate, and a resolution was passed, on 16.09.2002, by the Housing Board. As resolved by the Housing Board, an offer at enhanced rate of Rs.14,000/- per Square Yard was made and the Government are requested by the Housing Board to accord permission for

the sale of the subject premises at the said rate to the petitioner. Since the said matter is pending with the Government, the act of the Housing Board officials in seeking eviction on the alleged grounds is highhanded and discriminatory. The Housing Board has sold some lands in the vicinity and assigned some lands to Congress party at throw away prices. There are number of instances wherein Government lands are assigned or sold to the occupants or lessees on priority/preferential basis. Housing Board is not a commercial organization. The case of the writ petitioner is similar to the cases of petitioners in WP.No.25431 of 2007. In-fact, the petitioner's case is on a better footing as a proposal for sale outright is pending with the Government. The orders of the Court below and the competent authority are liable to be set aside.

3.1 Having reiterated the pleaded case and advanced contentions in line with the grounds urged in the pleadings, learned counsel for the petitioner alternatively contended that the writ petitioner gave a representation initially to continue the petitioner in the subject premises on revised enhanced rate of sale price and that pursuant thereto, the Housing Board resolved in its meeting held on 28.08.2002 to request the Government to accord permissions for sale of the subject premises to the writ petitioner on the offer of payment of revised enhanced rent at the rate of Rs.14,000/- per square yard and that, however, without prejudice to its rights and contentions, the writ petitioner later submitted another representation, dated 22.05.2012, during the pendency of this writ petition, for sale of land as per the request pending with the Government and that the writ petitioner stated in that representation that it is fair to consider the case of sale of land in favour of the writ petitioner at the rate of Rs.40,000/- per square yard and that the said request is also not

disposed of by the Chairman-cum-Commissioner of the Housing Board and that the same is pending with the said authority and that, therefore, the writ petition may be disposed of directing the said authority and the Housing Board to consider the said representation of the writ petitioner in the event this Court is not inclined to allow the writ petition and set aside the order impugned and the order of the Competent Authority.

4. The case of the Housing Board and the submissions made on its behalf, in brief, are as follows:

The property, i.e., open land in an extent of 783.03 Square yards was originally leased out in the year 1965 to Sri Motilal Chunnilal by the Public Works Department. However, all the buildings and open lands were transferred to the Housing Board for the purpose of implementation of development scheme. Further, in lieu of the said land, alternative area that is premises bearing No.26-W at MG road, that is, the subject premises was given on lease with effect from 21.05.1970 initially for a period of one year. The said lease was renewed for the period from 08.04.1971 to 30.09.1979, on a monthly rent of Rs.850/-. The lease was renewed for a further term, that is, from October, 1979 to September, 1980; and, Motilal Chunnilal executed a lease deed, on 01.10.1979. The lease period was not further extended. Therefore, there is no subsisting period of lease; and, hence, the writ petitioner is liable to vacate and handover possession of the subject premises. Further, the said Chunnilal continued in possession of the property as a tenant holding over and further failed to pay rents. Therefore, the case was referred to the Competent Authority in the month of June, 1983. The writ petitioner paid arrears of rent;

and, hence possession was restored, on 21.02.1984. The said Motilal Chunnial neither sought renewal of lease nor paid the rents. Therefore, the lease of the subject premises was canceled and possession of the subject leasehold premises was requested to be handed over to the Board as per the letter, dated 23.04.1986. By the said letter, the Board was directed to work out uniform rates in respect of leases of lands to the petrol bunks on the basis of area and location to avoid arbitrariness. Accordingly, the Board fixed rent at the rate of Rs.3,149/- for the subject premises in the occupation of Sri Motilal Chunnial and the tenant was asked to execute a fresh lease deed with revised rates and give acceptance for revised rents. Instead of executing the lease deed, Motilal Chunnial sought reduction of the rent by way of a representation, and further requested for thirty years lease *vide* letter, dated 11.12.1986. The same was rejected and case for eviction was filed before the Competent Authority. In the subject premises, Indian Oil Corporation's [IOC's] retail outlet cum petrol pump was installed. The Housing Board, as per resolution, dated 07.10.1987, called upon the Indian Oil Corporation to take the said land initially for a period of six years subject to the clearance of arrears of rent. However, in the meantime, Motilal Chunnial paid part of the arrears of rent, that is, Rs.46,600/- by 31.08.1987 in five installments and further paid arrears up to 13.05.1988. The IOC agreed to pay the balance arrears of rent from 01.09.1987 and requested for renewal of lease for five more years *vide* letter, dated 06.07.1988. The said Chunnial once again failed to pay rents from 01.10.1988 onwards. Hence, IOC *vide* letter, dated 02.02.1989, requested for transfer of lease, so that the rents can be paid regularly. On 25.05.1989, the 1st respondent Board issued a letter to the IOC to pay arrears of rent to facilitate consideration of the case

of transfer of lease. On 30.08.1989, IOC informed that it has decided to enter into lease agreement subject to payment of penal interest upto 31.07.1989 on the amount due in a sum of Rs.33,221.95 ps. However, Chunnilal, who is a chronic defaulter, failed to pay rents from 01.10.1988 to 21.02.1990 in a sum of Rs.77,245/- . Therefore, intervention of IOC was sought. However, IOC was reluctant to take further steps. In the meantime, the matter was referred to the Competent Authority; and, in the year 1993, Chunnilal paid arrears of rent, that is Rs.2,23,460.75 ps. upto July, 1993. After 1980, no further lease deed was executed. Hence, there was no valid lease and the rents were adjusted towards damages for use and occupation under the caption of 'user charges'. While the matters were pending, in the meeting, dated 11.05.2000, a decision was taken for sale of the leased out lands on outright sale basis; and, the Board called upon Chunnilal for discussions, on 18.12.2000. Instead of Chunnilal, who is the responsible person, one Suresh Kumar Gupta came for discussions and offered Rs.12,500/- per square yard, whereas the basic value fixed by the office of the sub-registrar was Rs.18,000/-. The matter was referred to the subcommittee. The committee complained that Chunnilal is a chronic defaulter & litigant and that Chunnilal is gaining time and that if the sale would take place as per the value in the basic value register, the property of the Board will fetch Rs.98.41 lakhs and that the amount offered by the said person is less. A further opportunity was given to the said Chunnilal by requesting to attend the meeting on 28.01.2002. However, he did not attend before the Board on the said date. Therefore, the Board decided to sell the subject premises to Indian Oil Corporation as per prevailing market value of the land, on outright sale basis as per the representation, dated 27.03.2002. To give fair opportunity

to the Indian Oil Corporation as well as the writ petitioner, they were called upon to attend the meeting on 29.04.2002. On the said date the representative of Chunnilal raised untenable objections stating that he is a long standing tenant and that he should be given the subject property for a lesser price. Indian Oil Corporation agreed to purchase the land for Rs.20,000/- per square yard after obtaining necessary clearance and permissions from the concerned department and Ministry, as it is a Government of India undertaking and sought one month time. In the meanwhile, the representative of Chunnilal filed W.P.No.9690 of 2002 and obtained interim order not to dispose of the schedule premises. The writ petition was disposed of, on 19.09.2008. As per the observations in the orders in the said writ petition, lands in excess of 100 square yards have to be disposed of only by way of public auction. The schedule land is 787.03 square yards. It was further held that a writ of mandamus cannot be issued until there is a change in the Government policy. The representative of Chunnilal has not disclosed about the death of Chunnilal. The said representative, Suresh Kumar Gupta, has no *locus standi* to agitate the issue, since the lease was given in individual capacity to Chunnilal and not to the partnership firm. The Board owns the entire land on either side of Mukramjahi Road. In view of the growing demand for commercial area at that road and as there is also no vacant land at the place, the Board took up the policy decision to construct commercial complex at the subject premises. In view of the policy decision of the Government and the 1st respondent Board, the proposal for selling of the land by outright sale was withdrawn *vide* letter, dated 19.08.2005. And, keeping in view the public interest, the Housing Board has decided to construct a commercial complex. Therefore, the authority

initiated proceedings for eviction and obtaining vacant possession of the premises. The Board never entered into any lease agreement with M/s.Chunnilal and sons represented by its Managing partner. The Competent Authority allowed the eviction petition and ordered eviction; and, the learned Chief Judge confirmed the said orders by dismissing the appeal of the writ petitioner. The writ petitioner has no *locus standi*. In the orders, dated 14.10.2003, in WPNo.26653 of 2001, this Court regulated the sale of open plots by public auction. The Board is required to protect public properties. Therefore, and as the policy was changed, all the resolutions passed by the Board got nullified. The writ petition does not lie. Hence, the interim order may be vacated and the writ petition may be dismissed.

5. I have given earnest consideration to the facts and submissions.

6. As per the material on record, it is indisputable that a notice as required under Section 52 of the Act was issued, on 24.07.2008, directing the writ petitioner to vacate the premises within one month and that in the said notice, it is *inter alia* stated that on failure to do so appropriate action would be initiated under Section 52(2A) of the Act. Since the demand in the said notice was not complied with, a case for eviction was filed before the Competent Authority, and the Competent Authority after giving opportunity fixed a date for appearance of the writ petitioner. However, even according to the contentions of the writ petitioner, no counter is filed in the eviction case and, therefore, the matter was reserved for orders/judgment by the Competent Authority and that before the order/judgment was pronounced, a counter has been filed along with a petition and that without considering the same, the Competent

Authority passed the order of eviction and that the same was confirmed by the learned Chief Judge. Be that as it may.

7. The alternative contention of the writ petitioner is that it is entitled to purchase the subject property not only in view of it's earlier representation and the resolution of the Board & it's recommendation, which is pending with the Government, but also in view of the subsequent representation, dated 22.05.2012, whereby the writ petitioner offered for purchase of the land at the rate of about Rs.40,000/- per square yard. On this aspect, it is to be noted that the said contention needs no countenance, in view of the change of policy of the Government. In WP.No.25682 of 2005 [between Nirmal Kumar v. The Competent Authority and others], this Court by order, dated 21.11.2008, while considering the question whether the petitioner therein has a right to compel APHB to sell land to him otherwise than by public auction, held as follows:

...As a general legal proposition, it is well settled that State owned/public owned property cannot be dealt with at absolute discretion of executive. Public interest is paramount consideration. The only method of securing public interest is to dispose of the property by public auction or by inviting tenders. When the property is disposed of by public auction or by inviting tenders, the standards and guidelines set out in the invitation to tender document must be scrupulously adhered to and the method of private negotiations is not ordinarily permissible. (See Ramana Dayaram Shetty v. International Airport Authority [(1979) 3 SCC 489]; Ram & Shyam Company v. State of Haryana [(1985) 3 SCC 267]; Chenchu Rami Reddy v. Government of Andhra Pradesh [(1986) 3 SCC 391]; and, Sri Sachidanand Pande v. State of West Bengal [(1986) 3 SCC 391].

The above order of the learned single Judge was confirmed by a Division Bench of this Court *vide* it's judgment, dated 08.12.2008, in W.A.No.1616 of 2008. In the case on hand also, there are no special or rare circumstances warranting the Housing Board to sell the subject premises otherwise than by public auction. Hence, the alternative contention of the petitioner deserves no countenance.

8. Coming to the contention that the Housing Board without following the procedure established by law undertook construction of a multistoried building complex and hence, on that ground eviction of the petitioner cannot be sought, it is apt to note that there is no subsisting lease even according to the case of the petitioner and that the agreed/extended term of lease has come to an end. In that view of the matter, the writ petitioner is bound to vacate the subject property since the possession of the writ petitioner is unauthorized. The specific case of the Housing Board also is that the amounts paid as rents were adjusted towards user charges. In the decision in **Gulam Dastagir Khan (Died per LR) Shakniwaz Zaman Khan v. A.P.Housing Board rep., by its Chairman**, [1978 ALT Reports page 199] this Court held that when once the Competent Authority issues a notice asking any person who is in occupation to vacate its premises and that person refuses or fails to comply with the demand in the said notice, the person in occupation of the premises shall be deemed to be in unauthorised occupation. In the said decision, it was also held that the Housing Board is entitled to seek eviction of the person in possession of its property if it desires to construct a multi storied building complex and that such a requirement can be regarded as requirement of the premises for the use of the Board and that such a use is legitimate use by the Board.

9. On the above analysis, this Court finds that none of the contentions advanced by the writ petitioner are tenable and that the writ petition is liable to be dismissed.

10. In the result, the Writ Petition is dismissed. The petitioner is granted a time of two months from the date of receipt of a copy of this order for

vacating the subject premises and handing over peaceful vacant possession of the same to the Housing Board. On failure of the petitioner so to do, the Housing Board – respondents are entitled to obtain vacant possession of the subject property by following the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

29.08.2018

Note: Issue CC by 12.09.2018.

[B/o]

Vjl

