

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

WRIT APPEAL No.740 of 2017

Judgment: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

We have heard the learned counsel for the appellant and Sri S. Lakshminarayana Reddy, learned Standing Counsel for the respondents 1 and 2.

2. The appellant was the occupier of a premises belonging to the Greater Visakhapatnam Municipal Corporation, which is the 1st respondent.

3. Purportedly acting under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971; hereinafter referred to as the Central Act; the 2nd respondent-Estate Officer of the 1st respondent issued notice dated 28.10.2015. On the premise that the appellant is an unauthorized occupant, Section 3-A of that Act was invoked.

4. The proposed eviction was confirmed after hearing the appellant. The appellant challenged it before the District Judge in Appeal under Section 9 of the Central Act. That was turned down. Hence, he filed the Writ Petition from which this Writ Appeal arises.

5. The fundamental grievance brought out by the appellant is that the 1st respondent is not entitled to invoke the provisions of the Central Act since it is not one of the authorities for whose benefit, the said Act could be invoked. Accordingly, it is pointed out that the 2nd respondent-Estate Officer did not have jurisdiction at all to act under the Central enactment. This is a fundamental premise on which the appellant had challenged the Estate Officer's proceedings before the District Judge. After the learned District Judge dismissed the appeal, this Court,

through the impugned order, took the view that the situation is a misquote of the provision and similar provisions are available in the Andhra Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1968. Accordingly, it was held that the 2nd respondent-Estate Officer was within his jurisdiction to have taken the impugned proceedings. That position notwithstanding, the learned Single Judge also offered the appellant an opportunity to vacate the premises within a timeframe and imposed an order of costs.

6. Hearing the learned counsel for the appellant and the learned Standing Counsel for the respondents, we notice that as of now, the appellant has been evicted; or rather, he surrendered possession in pursuance to the undertaking given by him. It also appears that the building itself has been demolished.

7. Learned counsel for the appellant is justified in saying that it is one thing to note that similar provisions in an enabling Act could have been invoked provided the authority exercising jurisdiction would have been duly vested with the authority under a different enactment. To our query, we are told that the 2nd respondent was not vested with any authority under the Central enactment. The fact of the matter remains that the appellant's plea was that he was proceeded against by the 2nd respondent-Estate Officer without jurisdiction at all in view of the fact that the assets of the 1st respondent were not covered by the Central enactment. That issue remains unanswered. The learned counsel for the appellant, is therefore, justified in pointing out that his client may seek other remedies on the ground of wrongful eviction, if the law so permits. We leave open that issue.

8. Noticing that the building itself does not survive to be re-delivered in the event of the appellant succeeding in this Writ Appeal, we do not find that any further orders could be issued in this case.

9. For the aforesaid reasons, this Writ Appeal is only to be ordered vacating the findings in the impugned order issued by the learned Single Judge in the Writ Petition and protecting whatever remedies the appellant may have in the light of what is stated. This appeal is ordered accordingly.

Pending miscellaneous petitions, if any, shall also stand closed.
No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

V. RAMASUBRAMANIAN, J

Date: 3rd August, 2018

pnb

