

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

Writ Petition No.11387 of 2011

ORDER:

The relief sought for in this Writ Petition is to declare the action of the respondents in demolishing the angular tin shop of the petitioner in the tenanted premises near old Bus Stand, Nandipet Village and Mandal, Nizamabad District, as illegal and arbitrary. A consequential direction is sought to the respondents not to interfere with the possession of the petitioner in respect of his angular tin shop.

The petitioner asserts that he was granted lease of a small extent of 9 feet x 18 feet in the year 1988, for the purpose of erecting a shop to be put to commercial use; the initial rent of Rs.25/- was enhanced periodically and, at present, he was paying Rs.100/- per month as rent; he was running an electrical motor starter repair shop in the said angular tin shop which is his only source of livelihood; the respondents had, without any prior notice, demolished his shop on 07.03.2011; and respondents 2 and 3, along with one Ashanna, came to the shop premises and pulled down the shop with the help of the Grampanchayat tractor. The petitioner contends that, even if he has to be evicted, the provisions of Section 106 of the Transfer of Property Act should have been followed; and the action of the respondents, in demolishing his shop, is illegal and arbitrary. The petitioner claims to have lodged a complaint to the District Collector, Nizamabad on 27.03.2011, but to no avail.

The Writ Petition was admitted on 14.11.2011, and notice was ordered in the WPMP. Consequently, the petitioner is not in

occupation of the said premises, atleast for the past 6½ years. In the counter-affidavit, filed by the Panchayat Secretary, it is stated that the subject land was granted on lease to the petitioner in the year 1988; during the year 2004-05 the rent was Rs.100/- per month; subsequently, in April, 2006, the petitioner had voluntarily removed his shop and had, thereafter, not paid any rent till date; it was not true to say that the grampanchayat had demolished the shop on 07.03.2011; the petitioner was not paying monthly rent to the grampanchayat from April, 2006 onwards, as the said shop was voluntarily removed by him; when the petitioner tried to erect the temporary shed in March, 2011, the grampanchayat had stopped such erection as he had not obtained any permission from them; the petitioner was not in possession of the shop from April, 2006 onwards; and no rents were paid by him from April, 2006 onwards.

No reply-affidavit has been filed on behalf of the petitioner. The fact that the subject land belongs to the grampanchayat is not in dispute. The averments in the counter-affidavit, therefore, stand un rebutted. Since the petitioner is said to have discontinued carrying on operations in the shop from April, 2006 onwards, and to have stopped paying rents from then, I see no reason to permit him to re-occupy the shop eleven years after he had voluntarily vacated the said premises. The petitioner was obligated, in terms of the lease granted to him in the year 1988, to vacate the premises on completion of the lease period. The petitioner cannot claim, as of right, that the lease granted to him in the year 1988 should be continued in perpetuity. I see no reason, therefore, to direct the respondents to put the petitioner in

possession of the subject premises. The relief sought for in the Writ Petition cannot be granted. It is, however, made clear that this order shall not disable the petitioner, in case the subject land has not been put to any other use till date, to request the grampanchayat for grant of lease; and, if any such application is made, the order now passed by this Court shall not disable the grampanchayat from considering the same in accordance with law.

Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

Date:19.01.2018.
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RAMESH RANGANATHAN, ACJ.

