HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B.RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1428 of 2018

JUDGMENT : (ORAL) ***(Per Hon'ble Sri Justice S.V.Bhatt)***

Heard Mr. Vedula Venkata Ramana, learned Senior Counsel for appellant and Mr.D.Ranganatha Kumar for A.P.Housing Board. The parties are referred to as arrayed in the writ petition.

2. The issue for consideration arises under Sections 52 and 52 (2A) of A.P. Housing Board Act, 1956 (for short 'the Act'). The writ petitioner assails the order dated 24.02.2009 passed by the Chief Judge, City Civil Court, Hyderabad in C.M.A.No.11 of 2009, whereunder, the order of eviction dated 17.01.2009, passed in Case No.36/CA1/2008, was confirmed, as illegal and violative of principles of natural justice. The appeal is heard and disposed of on the undisputed facts and circumstances, which are stated thus;

On 24.07.2008, the Land Acquisition Officer, A.P. Housing Board issued notice to petitioner under Section 52 (2A) of the Act. On 17.01.2009, order of eviction of petitioner from premises No.26/W, M.J. Road, Hyderabad, measuring 787.03 square yards, was passed. The petitioner, assailing order dated 17.01.2009, filed CMA.No.11 of 2009 before the Court of Chief Judge, City Civil Court, Hyderabad. On 24.02.2009, CMA.No.11 of 2009 was

dismissed. The petitioner filed writ petition No.3927 of 2009 and the same was dismissed through order dated 29.08.2018. Hence the appeal is filed.

3. Mr.Vedula Venkata Ramana contends that the order of eviction is in utter disregard of Section 52 (2A) of the Act. Firstly, the competent authority has not issued the notice dated 24.07.2008, and secondly, that the notice does not satisfy the requirements of Section 52 (2A) of the Act, inasmuch as the purpose for which the subject matter is required by respondents, is not established. He further contends that no opportunity was given before the order of eviction was passed. The order of eviction is passed by referring to self-serving statements made in the notice dated 24.07.2008. The appellate Court as well as the learned Single Judge were persuaded by the submissions of Housing Board/respondent, and they have omitted to examine the crucial facts, namely, whether the eviction is sought on the ground that the validity of the lease expired long ago, that there is no extension and therefore, the possession of writ petitioner is illegal and the petitioner is liable to be evicted. Secondly, it is not clear whether the construction of complex is a *bona fide* requirement or a ruse to dispossess the writ petitioner. Mr.Venkata Ramana does not dispute that the respondent-Board has jurisdiction to seek eviction of writ petitioner as unauthorized occupant and also for its utility under Section 52 (2A) of the Act.

The wording of these two Sections imposes a duty on the primary authority to divulge or disclose basic details or initiate action by specifically referring to the available powers. Now the order of eviction since was made by referring to Section 52 (2A) of the Act, it cannot be sustained by referring to Section 52 of the Act. He prays for setting aside the orders under appeal and direct the primary authority to afford opportunity to petitioner and pass orders in accordance with law.

4. The learned Standing Counsel by reading the orders under appeal, contends that the intra Court appeal does not make out a ground where manifest injustice to lessee/writ petitioner could be pointed out, and secondly, these objections are considered by the appellate Court and the learned Single Judge, and therefore, does not warrant interference in this intra Court appeal. He alternatively submits that the notice, if is not issued by the competent authority, the matter can be re-examined. In such an eventuality, opportunity may be given to Housing Board/respondent to raise additional grounds for seeking eviction of writ petitioner.

5. After perusing the record, *prima facie* we are of the view that initiation of proceedings under Section 52 (2A) of the Act are substantially at the instance or on the notice issued by the Land Acquisition Officer of Housing Board. The writ petitioner tried to

file reply to the show cause notice, however, was shutout without giving fair opportunity when the Statute envisages consideration of these issues by recording satisfaction on the grounds referred in Section 52 (2A). Therefore, the petitioner did not have opportunity before the primary authority to effectively defend his case. The grounds viz., that the notice was issued by an authority other than one who is entitled and the eviction is not sought on the ground that the lease expired long ago, raised in this behalf, are clear and categorical. The Housing Board failed to satisfy us whether the order was preceded by reasonable opportunity or that the eviction is also sought on expiry of lease period, by reference to record. Therefore, since the omission results in manifest hardship and prejudice to the writ petitioner, the orders under appeal are set aside and case remitted to 2nd respondent for fresh consideration and disposal in accordance with law. The Housing Board/respondents are given liberty, if so advised or circumstances warrant, to raise additional grounds in support of their prayer for eviction of writ petitioner and the writ petitioner is given Four weeks' time from today to file counter affidavit/reply before the primary authority. The primary authority considers and disposes of the appeal as expeditiously as possible, preferably in three months from today.

6. The writ appeal is allowed. Orders impugned in the writ petition are set aside. The matter is restored to file before the Estate Officer. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

25th October, 2018

ajr