

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT APPEAL Nos.712 of 2019

26.08.2019

Between:

Soma Subash

...Appellant

And

The State of Telangana and another

...Respondents

Counsel for the appellants : Mr. B. Vijaysen Reddy

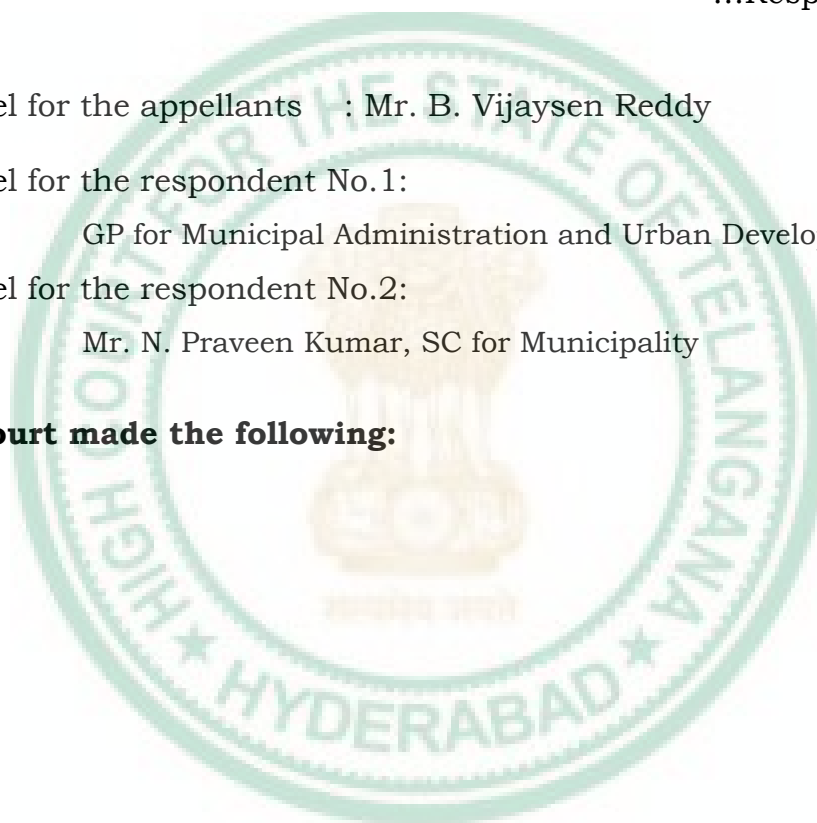
Counsel for the respondent No.1:

GP for Municipal Administration and Urban Development

Counsel for the respondent No.2:

Mr. N. Praveen Kumar, SC for Municipality

The Court made the following:



JUDGMENT: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

With the consent of learned counsel for the parties, this case is being decided at this juncture itself.

This writ appeal arises out of the order, dated 05.08.2019, passed by a learned Single Judge, in Writ Petition No.16434 of 2019, whereby the learned Single Judge had dismissed the writ petition filed by the petitioner.

In the writ petition, the petitioner had challenged the legality of the notice dated 29.06.2018, issued by the Andol Jogipet Municipality, the respondent No.2. By the said notice, the Municipality had directed the petitioner to vacate the shop within three days from the date of the notice, and to pay the arrears of rent.

According to the petitioner, on 01.07.2012 he had taken Shop No.11 in Municipal Shopping Complex at Jogipet town of Andol Mandal. The lease, granted by the Gram Panchayat, was for a period of three years. However, by notice dated 09.01.2018, the Municipality had directed the petitioner to vacate the shop. Aggrieved by the said notice, the petitioner had filed a writ petition challenging the same before this Court. By order dated 24.01.2018, a learned Single Judge of this Court had directed that the petitioner shall continue to be in possession of the shop till the end of June, 2018, subject to his clearing the arrears of rent within one month from the date of the order. But for non-payment, he shall be liable to be evicted by virtue of that order within one week from the date of expiry of the time so fixed by the Court.

Subsequently, by notice dated 29.06.2018, the Municipality had granted three days time to the petitioner to vacate the shop

and to pay the outstanding amount to the Municipality. Since the petitioner was aggrieved by the said notice, he filed the present writ petition before this Court. However, as stated above, by the impugned order dated 05.08.2019, the learned Single Judge has dismissed the writ petition. Hence, this appeal before this Court.

Mr. B. Vijaysen Reddy, the learned counsel for the appellant, submits that the petitioner-appellant has not defaulted in paying the rent. Alternatively, even if there were any arrears of rent to be paid, the Municipality has not quantified the amount of arrears of rent to be paid in the impugned notice. Therefore, the notice is rather vague in its content. Secondly, according to Section 194 of the Telangana Municipalities Act, 1965 ('the Act', for short), even if a person were an unauthorised occupant, a notice of one month needs to be given to such a person for vacating the premises. However, in the present case, the notice has been given only for three days. According to the learned counsel, a notice for three days is not a valid notice in the eyes of the law. Therefore, the learned Single Judge is unjustified in dismissing the writ petition, and in concluding that "Section 194 of the Act is inapplicable in the present case".

On the other hand, the learned standing counsel for the Municipality submits that the petitioner has defaulted in making the payment of rent on time. Therefore, an outstanding arrears of rent does exist against the petitioner. Moreover, since this Court had directed the petitioner to vacate the premises by 30.06.2018, the petitioner was required to vacate the premises thereafter. Since the petitioner has failed to do so, the Municipality was well within its power to direct the petitioner to vacate the premises within

three days. Hence, the learned counsel has supported the impugned order passed by the learned Single Judge.

Heard the learned counsel for the parties and perused the impugned order.

Needlesstosay, a notice serves a substantial purpose under the law. A notice is issued to an erring party in order to bring it to his/her attention that an omission is being committed by him/her, which needs to be rectified by the person. Therefore, a notice, perforce, is required to be precise in its content, rather being vague. Even if the Municipality claims that there were arrears of rent, the Municipality is required to quantify the arrears of rent, which is outstanding. However, it has failed to do so. Therefore, the impugned order suffers from virus of being vague and unclear.

Section 194 of the Act is as under:

194. Power to evict certain persons from municipal premises:-

(1) If the Commissioner is satisfied-

(a) that a person authorised to occupy any premises vesting in or belonging to, the council has, whether before or after the commencement of this Act-

(i) not paid rent lawfully due from him in respect of such premises for a period of more than three months;

(ii) sublet, without the permission of the council, the whole or any part of such premises;

(iii) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

(b) that any person without the previous permission or licence from the council is in unauthorised occupation of any premises of the council,

he may, notwithstanding anything in any law for the time being in force, by notice served by post, or by

affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, order that such person as well as any other person, who may be in occupation of the whole or any part of the premises, shall vacate the same within one month of the date of the service of the notice, and where such notice relates to any land, shall also remove any building or other construction or anything deposited on it.

A bare perusal of Section 194 of the Act clearly reveals that the Section of 194(1) can be divided into two parts: while Section 194 (1)(a) deals with the persons, who are authorised to occupy any premises, Section 194(1)(b) deals with those persons, who are “in unauthorised occupation of the premises”. Moreover, Section 194(1)(b) of the Act clearly states that the Municipality may order that such a person shall vacate the premises within “*one month of the date of the service of the notice*”. Therefore, the Municipality is required to give a maximum of one month’s notice for the unauthorised person to vacate the premises.

In catena of cases, the Hon’ble Supreme Court has clearly opined that sufficient time has to be given for the erring person to do a particular act. The words “sufficient time” has been quantified by the Hon’ble Supreme Court as “at least two weeks”. Therefore, the notice given to the petitioner only for three days is not a sufficient notice. Hence, it is not a valid notice in the eyes of the law. Therefore, the learned standing counsel for the respondents is unjustified in claiming that merely because the petitioner happens to be unauthorised occupant, the Municipality was well within its power to issue a notice granting merely three days time for vacating the premises.

Considering the scope and ambit of Section 194(1)(b) of the Act, the learned Single Judge is not justified in concluding that Section 194(1)(b) of the Act is inapplicable to the present case. Even if by order dated 24.01.2018, the learned Single Judge had directed the petitioner to vacate the premises positively by 30.06.2018, even then the petitioner is “in unauthorised occupation”. Thus, his eviction has to be done strictly in accordance with law. The moment it is held that the petitioner is an “unauthorised occupant”, obviously Section 194(1)(b) of the Act comes into operation. Therefore, the conclusion drawn by the learned single Judge is unjustified.

For the reasons stated above, this writ appeal is hereby allowed. The impugned order dated 05.08.2019 is hereby set aside, and consequently, the notice dated 29.06.2018 is set aside. However, the Municipality is at liberty to issue a fresh notice to the petitioner under Section 194(1)(b) of the Act, and to give sufficient time, i.e., between 14 days and 30 days to the petitioner, to vacate the subject premises. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

26th August, 2019
JSU

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