

**THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE,
THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO,
THE HON'BLE SRI JUSTICE S.V.BHATT,
THE HON'BLE SRI JUSTICE S.RAVI KUMAR
AND
THE HON'BLE MRS. JUSTICE ANIS**

W.A.No.453 of 2005, W.P.Nos.5135 of 2001 and 10106 of 2002

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COMMON JUDGMENT: (per the Hon'ble The Acting Chief Justice Sri Dilip B.Bhosale)

The question referred to this Bench is “whether in case of acquisition of land by municipal authorities, for road widening, on consent of the landlord of a shop any notice is necessary to be given to the tenant in the shop?”. The question was referred by a Full Bench by order dated 22.02.2007 in W.A.No.453 of 2007.

2. Briefly stated the facts leading to reference, in the writ appeal, are that the 1st respondent-Municipal Corporation of Hyderabad in Writ Petition No.25333 of 2001, had issued a notice dt.7.12.2001 to petitioner therein, who was a tenant of the shop owned by the 3rd respondent therein, informing him that the owner of the shop handed over some portion of site under his occupation for road widening purpose to the Municipal Corporation free of cost and that he obtained permission for construction of fresh structure consisting of stilt (row shops and partly parking)+three upper floors (residential flats), and so the petitioner should vacate the shop in his occupation in three days to enable them to remove the structure affected in road widening in the interest of the public.

2.1 The petitioner questioned it on the ground that a tenant like him in occupation of the building cannot be forcibly evicted from the rented premises merely on obtaining the consent of a landlord. He

placed reliance upon the judgment of this Court in ***Ushodaya Publications, Hyderabad v. Commissioner, MCH***^[1] wherein it was held that consent granted to Municipal Corporation by the owner of premises for taking his property for road widening would not be binding upon the lessee, and that the Municipal Corporation had no right to take forcible possession of the land in question relying on the purported consent obtained by it from the petitioner's lessor without taking recourse to the provisions of the Land Acquisition Act as thereby the petitioner would be deprived of its own valuable right.

2.2 The learned Single Judge by order dt.07.09.2004 followed the Full Bench decision in ***Ushodaya Publications*** (supra) and observed that since the Municipal Corporation did not deny that it had not issued any notice to the petitioner before issuing the impugned notice dt.07-12-2001, its action was unsustainable. The Writ Petition was therefore disposed of giving liberty to the Municipal Corporation of Hyderabad to take necessary action after giving notice to the Writ Petitioner and permitting the petitioner to raise all objections for taking of the land for road widening as and when such notice is served. It was further directed that till this exercise was completed, the petitioner shall not be forcibly evicted if he was still in possession as on the date of disposal of the Writ Petition.

2.3 The landlord/owner of the premises of which the petitioner in W.P.No.25222 of 2001 was the tenant, challenged the order of learned Single Judge dt.07-09-2004 in W.P.No.25222 of 2001 before a Division Bench consisting of the then Chief Justice Sri Devender Gupta and Justice B.Seshasayana Reddy.

2.4 Before the said Division Bench, it was contended that the decision in ***Ushodaya Publications*** (supra) was rendered by a

Division Bench (when in fact it was rendered by a Full Bench) and that the said decision was contrary to the decision of another Division Bench of this Court in ***Ajit R Jadhav v. The Municipal Corporation of Hyderabad and others***^[2]. It was pointed out that the Division Bench in ***Ajit R. Jadhav*** (supra) had taken a view that the tenant in possession of property cannot raise any objection if the owner of the property had given his consent for taking of the property by the Municipal Corporation for road widening.

2.5 By order dt.23-03-2003 in W.A.No.453 of 2005 the Division Bench opined that ***Ushodaya Publications*** (supra) was a decision of a Division Bench and that Division Bench which decided it could not have overruled the decision of another coordinate Bench of this Court in ***Ajit R. Jadhav*** (supra), and therefore the decision in ***Ushodaya Publications*** (supra) was rendered contrary to law. It therefore referred the question “whether a tenant has a right to raise objection when the owner of the property has given his consent for acquisition?” to a Full Bench.

2.6 When the matter was listed before the Full Bench presided over by Justice Bilal Nazki, the said Full Bench noticed that the judgment in ***Ushodaya Publications*** (supra) was in fact rendered by a Full Bench and not by a Division Bench as mentioned in the reference order dt.23-03-2003 of the Division Bench in W.A.No.453 of 2005. The Full Bench then observed:

“After hearing learned counsel for the parties, we are of the view that the matter needs to be considered by a Larger Bench, let the file be placed before the Hon’ble the Chief Justice for constitution of an appropriate Large Bench.

Learned Standing Counsel for the Municipal Corporation of Hyderabad and learned counsel for the landlord stated that the road

widening project had been taken in the year 2001 and for the last six years, the project could not be completed because of pendency of this case. The tenant was the Writ Petitioner, who filed the Writ Petition and succeeded in the Writ Petition. Because of the shop which is in possession of the writ petitioner the road widening project has been deferred for the last six years. Learned counsel appearing for the tenant submits that, according to him, the tenant has an interest in the matter and if the shop is acquired in terms of the provisions of the Land Acquisition Act, he will be entitled to compensation. These contentions can be now decided only after the matter is heard by a Larger Bench, but since public interest is suffering for the last six years, and the road is not being widened because of pendency of these proceedings, we allow the Municipal Corporation of Hyderabad to widen the road and if the writ petitioner is finally held entitled to any compensation, the Court can order accordingly.”

2.7 This Larger bench was, thus, constituted to decide the above question referred to it.

3. In ***Ushodaya Publications*** (supra), a Full Bench of this Court presided over by the then Chief Justice S.B.Sinha held that a tenant cannot be deprived of his right to continue to possess the lease hold land without taking recourse to the provisions of Section 146 of the Hyderabad Municipal Corporation Act, 1955 and/or the Land Acquisition Act, 1894. It further held that a lessee derives an interest in the corpus of the property by reason of the memorandum of lease granted in his favour, that such rights of the lessee are also enumerated in Section 108 of the Transfer of Property Act, 1882, and that the owner of the land had transferred his right in relation to the properties in question subject to his right of reversion to recover possession thereof. It observed that a “State” within the meaning of Article 12 of the Constitution of India can take over possession and acquire right, title and interest in relation to the land only in exercise of its power of eminent domain, that Article 300-A of the Constitution of India mandates that nobody would be deprived of his right of property except in accordance with law, and that the right of the

lessee to continue to occupy the leasehold premises subject to the terms and conditions of the lease and/or any statute governing the same, is a valuable right. It was further held that in the event a property is acquired in terms of the provisions of the Land Acquisition Act, 1894, the tenant would come within the definition of the term "person interested" under Section 3 (b) of the Land Acquisition Act, 1894. It then referred to Section 146 of the Hyderabad Municipal Corporation Act, 1955 which enables the Municipal Corporation to acquire property by consent/agreement with the owner or alternatively where the owner does not give consent, under Section 147 through a process of acquisition as per the procedure laid down in the Land Acquisition Act, 1894 and held:

"The 1st respondent is a statutory authority. Its right to take possession of the land, therefore, must be exercised within the four corners of the statute. It is one thing to say that the provisions laid down under the said Act for acquiring the land are not required to be taken recourse to as the owner thereof has granted consent but the same would not mean that the lessee's consent need not be taken. There cannot be any doubt whatsoever that the said consent granted by the owner would not be binding upon the lessee and in that view of the matter the 1st respondent had no right to take forcible possession of the land in question, relying on the purported consent obtained by it from the petitioner's lessor without taking recourse to the provisions of the Land Acquisition Act as thereby the petitioner shall be deprived of its own valuable right."

3.1 The Full Bench relied upon decision dt.14-09-1987 in W.P.No.6294 of 1983 of Hon'ble Justice K.Ramaswamy (as he then was) wherein it was held:

"Under the provisions of the Land Acquisition Act read with the Hyderabad Municipal Corporations Act, the Corporation has been given power to acquire the land for public purpose by issue of notice under Section 4 (1) of the Land Acquisition Act, unless the parties given consent to the acquisition. In this case, in view of the above fact, it must be construed that the petitioner has not consented to part with possession of their land voluntarily."

(emphasis supplied)

4. Prior to the judgment in ***Ushodaya Publications*** (supra), the same issue had come up for consideration before a Division Bench consisting of the then Acting Chief Justice A.Lakshmana Rao and Justice S.Dasaradha Rama Reddy in 1993 in **Ajit R. Jadav** (supra). By the judgment rendered on 05-08-1993 in W.A.No.795 of 1993, the Division Bench observed that when the owner of a property gives consent, the question of a tenant in possession of such property raising any objection, does not arise. The relevant observations of the Division Bench are as under:

“In the instant case, the appellant is a tenant. His grievance is that the landlord has given consent to deliver the land with an ulterior motive to get rid off the tenant and the Corporation is not justified in granting permission to the owner of the property for constructing new building subject to condition of his delivering vacant possession of the land in question. It is contended by the learned counsel for the appellant that such a recourse is not contemplated under the provisions of the Hyderabad Municipal Corporation Act and the only power that is vested in the Commission of the Corporation is either to enter into an agreement with the owner of the property or to initiate proceedings for the acquisition of the land. We are not inclined to accept this contention. When the owner of the property gives consent for surrendering a portion of the land for the purpose of road widening, free of cost, the Corporation is quite justified in accepting such a proposal, instead of entering into an agreement with the owner or initiating proceedings for acquisition of the land. When the owner of the property gives consent, the question of raising any objection by a tenant in possession of such property does not arise.....”

The view of this Division Bench is thus contrary to the view in ***Ushodaya Publications*** (supra).

5. It is pertinent to note that the decision in ***Ajit R.Jadhav*** (supra) was specifically overruled by the Full Bench in ***Ushodaya Publications*** (supra) at paragraph 11 in the following words:

“11.....The decision of a Division Bench of this Court in Writ Appeal No.795 of 1993 (Ajit R.Jadhav Vs. The Municipal Corporation of Hyderabad and others) decided on 05-08-1993 wherein it has been held, “When the owner of the property gives consent the

question of raising any objection by a tenant in possession of such property does not arise” does not lay down the correct law. It is overruled accordingly.”

6. That apart we also noticed that a 5-Judge Bench of this Court in **Repaka Bhyravamurthy and others v. Muppidi Venkataraju and others**^[3] while dealing with the question that fell for its consideration referred to the judgment of the Full Bench in **Ushodaya Publications** (supra) and observed in paragraph 50 as under:

“50. In Ushodaya Publications (supra) the right of a lessee in a case of land acquisition was recognized stating that:

There cannot be any doubt whatsoever that the said consent granted by the owner would not be binding upon the lessee and in that a view of the matter the 1st respondent had no right to take forcible possession of the land in question, relying on the purported consent obtained by it from the petitioner's lessor without taking recourse to the provisions of the Land Acquisition Act as thereby the petitioner shall be deprived of its own valuable right. The 1st respondent, in our considered opinion, deprived the petitioner of the said right without taking recourse to law.”

From the observations, made in the aforementioned paragraph, it appears to us that the Larger Bench approved the observations made by the Full Bench in **Ushodaya Publications** (supra) holding that such a valuable right of the tenant cannot be held to be *non est* only because of the procedural and technical irregularities.

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7. Mr.P.Gangaiah Naidu, learned Senior Counsel appearing for the appellant, fairly conceded that a notice to the tenant in the shop is necessary in case of acquisition of land by the municipal authorities, for road widening, on consent of the landlord of a shop. He further submitted that such a notice is, however, necessary only to give the tenant a breathing time to vacate the premises and handover to the Municipal Corporation.

8. The question referred is limited “*whether in case of acquisition of land by municipal authorities, for road widening, on consent of landlord of a shop any notice is necessary to be given to the tenant in the shop?*”. The Full Bench in ***Ushodaya Publications*** (supra) considered almost similar question and observed that a Municipal Corporation being statutory authority has right to take possession of the land but they must exercise their right within four corners of the statute. It was further observed that it is one thing to say that the provisions of the MCH Act for acquiring land are not required to be taken recourse to as the owner thereof has given consent but the same would not mean that the lessee’s consent need not be taken. There cannot be any doubt whatsoever that the consent granted by the lessor/owner would not be binding upon a lessee and in that view of the matter the Corporation has no right to take forcible possession of the shop/land, such as in the present case, relying on the purported consent obtained by it from the lessor, without taking recourse to the provisions of the Land Acquisition Act, thereby depriving the lessee of his valuable right. Thus, according to the Full Bench, a notice to the lessee/tenant in the shop is necessary in case of acquisition of land by the municipal authorities for road widening on consent of landlord of a shop. In the reference order, the Full Bench presided over by Justice Bilal Nazki did not take either a differing view or noted its dissent. It is not in dispute that there is no other judgment of the Full Bench in the field taking differing view than the one expressed by the Full Bench in ***Ushodaya Publications*** (supra). None of the learned counsel for the parties have made any attempt to persuade us to take a view contrary to the one expressed in ***Ushodaya Publications*** (supra).

9. In this backdrop, we are of the considered opinion that the

judgment of the Full Bench in ***Ushodaya Publications*** (supra) states the correct position of law and that we do not find any reason to take a differing view. The question referred to the Larger Bench is, accordingly, answered in the affirmative. In other words, we hold that a notice to the tenant in a shop is necessary in case of acquisition of land by Municipal authorities for road widening even if the landlord/owner of the premises has given his consent.

10. Office is directed to place the papers in Writ Appeal as well as Writ Petitions before the appropriate Bench for its decision on merits in the light of the opinion expressed by us.

Dilip B.Bhosale, ACJ

M.S.Ramachandra Rao, J

S.V.Bhatt, J

S.Ravi Kumar, J

Anis, J

27th November, 2015.
TSNR

[\[1\]](#) 2001 (3) ALD 173

[\[2\]](#) W.A.No.795 of 1993 dt.05-08-1993

[\[3\]](#) 2002 ALT (Rev.) 101 (L.B.)