

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.18402 of 2008

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ORDER:

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Premises bearing No.3-4-526/24 situated at Tahniyat Bagh, Lingampally, Hyderabad was purchased by Smt.D.Hemalatha Devi through sale deed, dated 07.05.1955. Immediately neighbouring premises bearing No.3-4-526/25 was purchased by her husband Sri D.L.Ananda Rao through sale deed, dated 12.05.1955. Both the premises are parts of a larger premises. Ananda Rao died on 22.06.1974. He executed a Will, dated 01.10.1973, bequeathing his property to his wife (D.Hemalatha Devi), and three children i.e. Jyothi Subramanyam Dittakavi (son), Ashok Dittakavi (son) and Meena Mantravadi (daughter). Hemalatha Devi executed a Will, dated 07.08.1985, bequeathing her property in favour of her three children and she died on 15.09.1985.

The premises were leased to the Department of Posts, respondent No.3 herein, for establishing a Post Office in the year 1973. Rents were being paid regularly till the death of Anand Rao. Thereafter, respondent No.3 stopped payment of rents on one pretext or the other, though the legal heirs of Ananda Rao were approaching it. Subramanyam Dittakavi S/o. Ananda Rao was approaching respondent No.3 for payment of rent. Through letter, dated 04.01.1989, respondent No.3 informed Sri Subramanyam Dittakavi that rents would be paid on production of legal heir certificate. In reply to a request for vacating the premises, respondent No.3 informed that a departmental shed is under construction and the premises would be vacated shortly. In a subsequent letter, dated 03.04.1990, respondent No.3 informed

that the premises would be vacated within two or three months.

The legal heirs of the original owners sold the property to the petitioner herein through sale deed, dated 21.10.2004. Before the sale, proceedings were initiated for eviction of respondent No.3. The petitioner filed R.C.No.34 of 2006 before the I Additional Rent Controller, City Civil Court, Hyderabad. The R.C. was dismissed on the ground that a notification may have been issued under the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Rent Control Act') exempting respondent No.3 from the purview of the Act. The appeal preferred by the petitioner was also dismissed.

An application filed for fixation of fair rent by the petitioner being R.C.No.128 of 2007 was allowed and the rent was fixed at Rs.14,750/- through order, dated 22.11.2010. The petitioner contends that an appeal filed against it is pending. It is also stated that ever since 1985, respondent No.3 did not pay rent for the premises.

The District Collector, Hyderabad, respondent No.4 herein, issued notification, dated 28.06.2007 under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') proposing to acquire the said premises for the purpose of construction of a Post Office. The name of one Smt. Lalitha Devi, who was not the owner of the property, at any point of time, was mentioned. The petitioner submitted a detailed representation opposing the acquisition. Overruling the same, respondent No.4 published declaration under Section 6 of the Act on 21.07.2008. The petitioner challenges the said proceedings.

The petitioner contends that respondent No.3 acted in a manner that does not befit a Department of the Union Government. He contends that from the year 1985 onwards, rents

were not being paid and even after fair rent was fixed, no rents were paid so far. It is also their case that respondent No.3 committed in writing way back in the year 1989 that the Post Office would be shifted in two months to their own premises and even after one decade from that date, no steps were taken. It is also pleaded that the notification was issued only as a reaction to the eviction proceedings initiated against respondent No.3.

Respondent No.3 filed the counter-affidavit and the additional counter-affidavit. According to it, the rent was not paid for want of information about the actual legal heirs of the original owners. It is stated that though a promise was made to vacate the premises in the years 1989 and 1990, at a later point of time, it has been decided to acquire the property for public purpose. The details of the correspondence and proceedings that ensued in this regard are referred to.

Respondent No.4 filed a counter-affidavit opposing the writ petition. He contends that the property is needed for a public purpose and that no exception can be taken to the proceedings. He submits that every step in the matter was taken in accordance with the relevant provisions of law.

Sri P.Thirumala Rao, learned counsel for the petitioner submits that respondent No.3 is enjoying the property without paying rent for the past 3 ½ decades. He contends that had such acts been resorted to by any private individual, he would have been accused of squatting on or grabbing the property unlawfully. He submits that contrary to the promise made by respondent No.3 to vacate the premises in the year 1989, the possession was not delivered to the original owners or the successors, or to the transferees and that the procedure prescribed under the Act was

resorted to, in gross misuse of power. He submits that the lack of bona fides on the part of respondent No.3 is evident from the fact that the rent was not paid even after the rights of the petitioner were determined by a Court of law and, being a Department of Central Government, it is enjoying the property for the past 3 ½ decades without paying any rent. He contends that the proceedings under the Act were initiated with oblique motive and contrary to the commitment made by the 3rd respondent.

Sri Ponnamm Ashok Goud, learned Assistant Solicitor General for respondent No.3, on the other hand, submits that the proceedings under the Act were initiated strictly in accordance with law. He submits that non-payment of rent for the premises was on account of doubt as to the identity of the actual legal heirs of the original owners. He further submits that the petitioner came into picture at a later point of time and it cannot challenge the proceedings that were initiated strictly in accordance with law. It is also stated that though a promise was made in the year 1989 to vacate the premises, the acquisition was proposed in view of the changed circumstances.

The property comprising of two bits was purchased by Sri D.L.Ananda Rao and his wife way back in the year 1955. Respondent No.3 joined as a lessee somewhere in the year 1973. Rents were paid till the death of D.Hemalatha Devi in the year 1985. Thereafter, respondent No.3 stopped payment of rents in spite of request from the son of the original owners. Obviously, the fact that the son was residing in U.S.A. became handy for respondent No.3 to enjoy the premises without payment of any rent.

Even while promising to pay the rents on production of legal heir certificate, respondent No.3 promised to vacate the premises

within two months through letter, dated 03.04.1990. That promise was honoured in breach. Neither the rent was paid nor the premises was vacated. The fact that the legal heirs of the original owners are not residing in India was treated as a justification for respondent No.3 to enjoy the premises without paying the rents. Vexed with the indifferent and recalcitrant attitude of respondent No.3, the legal heirs of the original owners sold the property in favour of the petitioner.

After purchasing the property, the petitioner initiated proceedings under the Rent Control Act for eviction of respondent No.3. An objection was raised as to the very jurisdiction of the Rent Controller and that weighed with the Rent Controller. The appeal preferred against the R.C.C. was also dismissed.

Filing of R.C.C. by the petitioner appears to have irked respondent No.3, which was merrily enjoying the property without payment of rent. In gross misuse of the power of eminent domain, steps were initiated under the Act and notification under Section 4 (1) was issued. This was in clear breach of the promise made by respondent No.3 that the premises would be vacated within two months, in the year 1990. The only person, who participated in the enquiry under Section 5-A of the Act, was the petitioner herein. The objections were not at all considered as required under law. Declaration under Section 6 of the Act was issued. The curious part of the matter is that in the notifications under Section 4 (1) and 6 of the Act, neither the original owners from whom the property was taken on lease and who purchased the property way back in the year 1955 nor the subsequent purchasers were shown. Name of a totally unconnected person was mentioned in the notifications even while showing the 3rd respondent as occupant.

The power of eminent domain is required to be exercised

cautiously and for justifiable reasons. Such a power, which is indeed a facet of sovereign authority, cannot be resorted to, with an objective to justify or perpetuate the unlawful acts and omissions on the part of a Department of Government. The lack of bona fides on the part of respondent No.3 in the whole episode is evident from the fact that it is enjoying the property without paying the rents from 1985 onwards and that it has broken the promises meted out by it to the original owners that the premises would be vacated within two months.

The timing of the publication of notification assumes significance. The property was purchased by the petitioner herein and thereafter, the proceedings under the Rent Control Act were initiated by filing R.C.C.No.34 of 2006. It is then that respondent No.3 moved the machinery under the Rent Control Act and the power of eminent domain was pressed into service. There cannot be a better instance of gross misuse of power under an important statute, than this. There are absolutely no *bona fides* on the part of respondent Nos.3 and 4 in causing the notification under the provisions of the Act.

The power under an important statute like the Land Acquisition Act, 1894 was resorted to, to justify a totally untenable and illegal act on the part of respondent No.3 in squatting over the property in an important location of the city without paying the rents for the past 3 ½ decades. This Court cannot permit such gross misuse of power to take place.

Hence, the writ petition is allowed, as prayed for. There shall be no order as to costs.

The miscellaneous petitions filed in this writ petition also stand disposed of.

L.NARASIMHA

REDDY,J

Dt:29.02.2012

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