

Mohammed Ibrahim Vs. Deputy Commissioner of Police, Administration-cum-estate Officer, Hyderabad

Mohammed Ibrahim Vs. Deputy Commissioner of Police, Administration-cum-estate Officer, Hyderabad

SooperKanoon Citation : sooperkanoon.com/437775

Court : Andhra Pradesh

Decided On : Jun-25-1999

Reported in : 1999(4)ALD103

Judge : A.S. Bhate, J.

Acts : Andhra Pradesh Public Premises (Eviction of unauthorised occupants) Act, 1968 - Sections 4; [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : WP No. 15072 of 1989

Appellant : Mohammed Ibrahim

Respondent : Deputy Commissioner of Police, Administration-cum-estate Officer, Hyderabad

Advocate for Def. : Government Pleader for Home

Advocate for Pet/Ap. : Mr. Mirza Munawar Ali Baig, Adv.

Judgement :

ORDER

1. Petitioner herein was admittedly allotted the premises in question by order dated 21st March, 1969 vide proceedings No.BB/56-35-59-2 by the Commissioner

of Police. The said order is as follows:

'An old outpost building known as 'Chariest Street Outpost' bearing MCH No.9-3-72/73 situated near Gopalapuram Police Station, Secunderabad, is allotted temporarily with effect from 15-3-1969 to Sri Mohd. Ibrahim, PC No.3705 of Gopalapuram Police Station for his personal occupation at his own risk subject to the conditions that he will vacate the said outpost building on 15 days' notice whenever the Department requires the building, that he will not be entitled to any regular quarter when he is asked to vacate the said outpost building, that he will not make any additions or alterations to the said outpost building without prior permission and if he does so he will be liable to disciplinary action.

The HRA should be disallowed from the allottee's pay with effect from 15-3-1969.

Sd/- M. Venkatrama Reddy

for Commissioner of Police.'

The petitioner was at that point of time working as a constable in the Police force. The petitioner subsequently retired and was asked to vacate the premises so allotted. A notice in Form-A dated 7-5-1988 under the provisions of the A.P. Public Premises Eviction of Unauthorised Occupants Act (herein after referred to as 'the Act') was issued by the Additional Commissioner of Police, who was then holding Additional charge of Deputy Commissioner of Police, Administration-cum-Estate Officer (for short 'the DCP-Administration'). It is not disputed that DCP-Administration was the Estate Officer appointed for purposes of the Act in respect of the premises under the control of the Police Department at Hyderabad. Consequent to the notice dated 7-5-1988 the petitioner was sought to be evicted. The petitioner preferred appeal against the same as provided by the Act vide CMA No.284 of 1988 before the learned Chief Judge, City Civil Court, Hyderabad. The said appeal was dismissed.

2. The petitioner is challenging the said decision by present writ petition.

3. The contention of the learned Counsel for the petitioner is that the petitioner is a tenant and not an allottee of the premises given in his possession. It is urged that

the premises in question belong to Government of A.P. and the Commissioner of Police was merely authorised to lease-out the said premises. The petitioner has been paying the rent and he is a lessee of that premises. Hence without following due procedure under the Transfer of Property Act, he cannot be evicted. It is also contended that the notice dated 7-5-1988 has been issued by an unauthorised officer. The Authorised Officer was only DCP (administration). Further, it is contended that the petitioner has expended lot of expenditure for renovating, repairing and altering the premises in question and hence, he cannot be evicted now and he is entitled to occupy as long as he is ready and willing to pay the rent. The learned Government Pleader has supported the order saying that no illegality has been and the order does not deserve any second look in judicial review.

4. The order dated March 21st, 1969 is clear in terms. It says that the allotment was made to the petitioner by the Commissioner of Police only because the petitioner was serving constable. Though the building was an outpost originally the petitioner was allowed to live in the same in lieu of residential quarter. The petitioner was not entitled to HRA. The petitioner thereafter never received the HRA. It is obvious that the petitioner was a mere allottee of the premises under the control of Commissioner of Police and was therefore, nothing more than a licensee and to say that he was a tenant is travesty of facts. There is no material whatsoever to show that the premises were let out. In fact the argument is contradictory. At one place it is stated that the Commissioner had nothing to do with the premises and that the Government is the owner of the property and it only can let out and yet another point of time it is stated that the Commissioner has let out the property. Whatever it may be, a fair and just reading of the allotment order under which the petitioner entered the premises and is occupying the premises clearly shows that it is an allotment amounting to licence to the petitioner. The premises are fully covered by the provisions of the Act.

5. The contention that the order dated 7-5-1988 passed by Additional Commissioner of Police is without jurisdiction is meritless. He passed the said order because he was holding additional charge of DCP-Administration-cum-Estate Officer. It is tried to be contended that the DCP-Administration was on leave and therefore, the Additional Commissioner could not have passed the order

till the return of the DCP-Administration. This argument has to be stated for purpose of rejection. When the Additional Commissioner is holding charge of Deputy Commissioner of Police, all the powers of DCP vested for the time being in Additional Commissioner of Police.

6. The lengthy argument was advanced that a notice under Section 106 of the Transfer of Property Act should have been given and reliance placed on several decisions, is of no value whatsoever in view of the fact that there is no relationship of landlord and tenant as such.

7. The contention that petitioner has expended lot of amount to renovate, alter or modify the premises is neither here nor there for deciding the question in issue. The question is whether the petitioner is a licensee governed by the provisions of the Act or is a tenant whose eviction can be only by following the procedure prescribed under the Transfer of Property Act? In view of the aforesaid finding, the impugned order cannot be faulted with.

8. An attempt was also made at this juncture to say that the learned Chief Judge, City Civil Court had no power to entertain the appeal. This is an argument of frustration. In the first place the petitioner had himself filed the appeal and taken the chance and now he is trying to question the jurisdiction. In the second place as the premises were covered by the provisions of the Act, the appeal was rightly entertained by the learned Chief Judge and no exception can be taken now.

9. For all the reasons, I am of the view that the petitioner is trying to hold on the possession by some means or the other for all these years though he has retired long back. By obtaining directions suspending the eviction order in this writ petition, he has benefitted further. The writ petition is totally meritless and deserves to be dismissed with costs.

10. The writ petition is accordingly dismissed with costs.