

(2001) 08 AP CK 0163

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 9668 and 19117 of 1987 and 673 of 1992

Dr. Shyam Sunder Prasad and others

APPELLANT

Vs

Commissioner, MCH, Hyd. and others

RESPONDENT

Date of Decision : 13-08-2001

Acts Referred:

Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 — Section 1, 3(1), 3(2), 3(4)
Constitution of India, 1950 — Article 254(1), 300
Hyderabad Municipal Corporation Act, 1955 — Section 452

Citation : (2001) 5 ALD 851 : (2001) 6 ALT 209

Hon'ble Judges : Ghulam Mohammed, J; B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. K. Pratap Reddy, for the Appellant; Mr. Ganta Rama Rao, SC for Municipal Corporation, Additional Advocate-General and Mr. C. Nageswara Rao, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—At issue, is the validity of the action of the Commissioner, Municipal Corporation of Hyderabad in declaring the property of the petitioners as a slum area in exercise of the powers u/s 3(1) of the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956.

2. The notifications were issued and gazetted differently for different areas owned by the petitioners. While in WP No. 19117 of 1987, notification was issued on 14-10-1987 and gazetted on 5-11-1987, in WP No. 673 of 1992 the notification was issued on 4-12-1991, which was gazetted on 26-12-1991. In the said writ petitions, the validity of the above notifications is assailed as being unconstitutional, illegal, arbitrary and without jurisdiction. Insofar as WP No. 9668 of 1987 is concerned, a declaration is sought, for that the action of respondents 1 and 2 in issuing slum area occupancy certificates to the tenants of the petitioners in premises bearing Municipal Nos.5-4-51 to 5-4-108 and 5-4-123 to 5-4-182/2 as illegal as also the action of respondents 3 to 5 in issuing

electricity connections to the above premises without the consent of the petitioners.

3. The property is situated in the heart of Hyderabad city in between Mozamjahi Market and Abid Shopping Complex and is surrounded by all commercial houses and is the ancestral property of the petitioners. There was a civil action for partition among themselves in OS No. 300 of 1973 on the file of II Additional Judge, City Civil Court, Hyderabad and the same was decreed on 23-4-1974 earmarking their shares. Meanwhile, on the advent of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 the properties were declared as contemplated under the said Act and the said declarations were scrutinised and all the petitioners were held to be non-surplus holders. Thus, the petitioners were entitled to hold the property and exercise their ownership rights as they deem fit. But, their complaint is that fetters, which are unreasonable and arbitrary, are being placed on their exercise of rights by issuance of the notifications mentioned (supra) and the same are unsustainable and seek relief from this Court to quash the said notifications for the grounds stated, enabling them to exercise their rights over the property and particularly for the development of the remaining property for noble and humane cause of providing furthermore sophistic and specialised treatment for opthalmic patients and also for allied activities.

4. In a large complex owned by the petitioners apart from their residences and their opthalmic units including the hospital, there had been some tenants. While some tenants settled the matter amicably and vacated their respective premises, others had been continuing. Rent control proceedings were initiated by the petitioners against the said tenants on the ground of bona fide requirement of the premises for personal use. In some cases eviction has been ordered, which was affirmed on appeal by the Chief Judge, City Small Causes Court as also by this Court in its revisional jurisdiction. Pursuant to the same, most of the tenants have vacated the premises and some tenants are still hanging on to the premises under the guise of the notifications issued under the Slum Act of 1956 (hereinafter referred to as "the Slum Act"). Against some other tenants, still proceedings of eviction are pending and they are hauled-up because of issuance of notifications under the Slum Act. As seen from the material on record, the tenants, left on their own, would abide by law, but for the intervention of trade-unionists. Firstly, the proceedings under the A.P. Charitable and Hindu Religious Institutions and Endowments Act (for short "the Endowments Act") have been initiated on the ground that the Temples, which are located within the complex, are liable to be registered under the Endowments Act, that the petitioners have got no right over the properties and that the said properties have to be declared as Endowment properties and protection should be afforded to the tenants. The matter came up to this Court, but the tenant's plea was rejected. The second move was claiming the property owned by the petitioners as an inam property and seeking patta rights under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, but the said plea was also rejected by this

Court. Lastly, the tenants are claiming to be slum dwellers and at their instance, the above two notifications have been issued.

5. Section 3(1) of the Slum Act enables the Government to declare any area, which may be a source of danger to the public life, safety or convenience of its neighbourhood by the reason of the area being lowlying, insanitary, squalid or otherwise. Section 3(2) of the Slum Act enables the Government to acquire the said land on its satisfaction that it is necessary to acquire such land for clearing or improving the area. Here, the notifications, both dated 14-10-1987 and 18-11-1991 have been issued u/s 3(1) of the Slum Act and at that stage, these writ petitions have been filed questioning the very validity of the same on the following grounds:

(i) that the Slum Act, which is an Act of State of Andhra Pradesh is inoperative in view of Amending Act 68 of 1984 enacted by the Parliament incorporating some amendments into the Land Acquisition Act, 1894;

(ii) that u/s 3(1) of the Slum Act, it is the Government, which is the authority to apply its mind on the material available and then after getting satisfied about the necessity to acquire the land, issue a declaration in the shape of notification and that the impugned notifications have been issued by the Commissioner, Municipal Corporation of Hyderabad; and as such, are devoid of jurisdiction, and

(iii) the impugned notifications are the result of arbitrary and colourable exercise of power and are invalid.

6. Mr. K. Pratap Reddy, the learned senior Counsel appearing for the petitioners, submits that the definition of "public purpose" has been enlarged by the Amending Act 68 of 1984 incorporating the same into Land Acquisition Act, 1894 and the acquisition being a concurrent subject in List-3 of Schedule VII with Legislative Entry at 42 of Indian Constitution, the Amending Act 68 of 1984 being a later legislation having the assent of the President, it prevails over the Slum Act in view of Article 254(1) of Indian Constitution. He has drawn our attention to the word "public purpose" as defined by the Amending Act 68 of 1984 and we find that the Slum Development is enumerated as one of the public purposes. But, by that, the Slum Act cannot be held to be inapplicable for the reason that the Slum Act is a special enactment, while the Land Acquisition Act is a general enactment in the acquisition of properties. In fact, a Full Bench of this Court in *Pithana Apprao Vs. State of Andhra Pradesh and Others*, , upheld the validity of the Slum Act dealing with a similar contention. Further, in *Commissioner, Municipal Corporation of Hyderabad v. R. Yadagiri*, 1996 (4) ALD 296, it was held by a Division Bench that for enacting the Slum Act the source of legislative power is Item 18 of List 2 of Schedule VII; as such, the Slum Act prevails over the Land Acquisition Act, 1894. For the reasons mentioned infra, we need not go deeper into this contention, as even if it is : held that the Slum Act prevails over the Land Acquisition Act particularly in view of Amending Act 68 of 1984, a further comprehensive question arises with regard to quantum of compensation, as the

mode of determination of compensation under the Slum Act is a pittance as against the market value, which is a norm under the Land Acquisition Act. The Land Acquisition Act being a compulsory law and a disabling one in the context of a citizen, an important and larger question arises as to under which law the compensation is payable, out of one, which is a narrow and truncatic and the other in tune with Article 300-A of Constitution of India. In a disabling law like Land Acquisition Act, when two modes of computation of compensation are provided under two different laws, a question may arise as to whether a citizen is entitled for higher compensation computation methodology. But, as already stated above, such probe and adjudication into larger questions may not be necessary for the reasons mentioned infra.

7. Coming to next contention of Mr. K. Pratap Reddy, the learned senior Counsel appearing for the petitioners, with regard to the power of the Municipal Commissioner to issue the impugned notification on the ground that there is no delegation of powers to the Commissioner, we have to state that his contention is devoid of any basis, for, there are three notifications issued by the Government, one in G.O. Ms. No. 45 Housing, dated 8-3-1963, second in G.O. Ms. No. 987, Municipal Administration, dated 17-11-1992 and the third one in G.O. Ms. No. 10, dated 6-1-1990. In G.O. Ms. No. 45, the powers have been delegated to the Commissioner, Municipal Corporation of Hyderabad, as contemplated u/s 3(4) of the Slum Act and necessity to issue G.O. Ms. No. 987 arises as the Special Officer was appointed in view of the fact that there was no elected municipal body and as such, the powers of the Government were, delegated to the said Special Officer and on the election of regular municipal body and as the Special Officer ceased to function and again the Commissioner taking over the functions of the Municipal Corporation, a fresh notification in G.O. Ms. No. 10, dated 6-1-1990 has been issued authorising the Commissioner to exercise the powers. The Special Officer is nothing but the Commissioner performing both the functions of the Commissioner as well as the defunct municipal body and in view of the above three notifications in the above GOs., no case is made out that the impugned notifications suffer due to lack of proper delegation. We hold that the Commissioner of Municipal Corporation of Hyderabad, who acts as Commissioner and also as Special Officer, was a donee of the power to exercise the power u/s 3(1) of the Slum Act and as such, the impugned notifications have been issued by the proper nominee of the Government.

8. Now, we come to the last contention of the notifications being bad in law on account of arbitrary and colourable exercise of power. The Slums Act has been enacted to provide for the acquisition of lands in slum areas in the State of Andhra Pradesh. The object and intendment is that since there are a number of slum areas in almost every town in the State of Andhra Pradesh, which are a source of danger to public health and sanitation and as under the existing law, it has not been possible to provide for the basic needs of sewerage, water supply and road and side-drains in these slum areas, without causing excessive financial strain on the owners of the lands affected and in order to obviate the said

difficulty, the Legislature felt it expedient first to acquire the lands in those areas and thereafter to undertake the execution of the work designed to improve those areas. "Slum area" is defined in Section 2(f) as meaning any area declared to be a slum under sub-section (1) of Section 3. Subsection (1) of Section 3 of the Slum Act reads:

"Where the Government are satisfied that any area is or may be a source of danger to the public health, safety or convenience of its neighbourhood by the reason of the area being lowlying, insanitary, squalid or otherwise, they may, by notification in the Andhra Pradesh Gazette declare such area to be a slum area".

We need not go to other sub-sections of Section 3 to deal with the above point as the writ petitions have been filed at the stage when the notifications u/s 3(1) of the Slum Act were issued.

9. As seen from the above, no single word can be read in isolation and reading all the provisions together with the objects and reasons, the scheme which emerges is that on a particular land if there is a slum and that slum area becomes a source of danger to public health, safety or convenience of its neighbourhood by reason of the area being lowlying, insanitary, squalid or otherwise, they may, by notification in the Andhra Pradesh Gazette declare such area to be a slum area. But, if the owner of the land undertakes to develop the same so as to avoid the said unhygienic and insanitary conditions abating the nuisance, which may be caused to the neighbourhood, there cannot be any invocation of the provisions of the Slum Act. It is only when the land owner would be subject to excessive financial strain, the Government comes forward after being satisfied that the said slum area to be declared as a slum and then proceed further to acquire the said land and develop the same removing the environmental pollution. After a careful scrutiny of the material on record, we find at loss of existence of any such factors enabling the Government to invoke Section 3(1) of the Slum Act. On the property there had been permanent and semi-permanent structures belonging to the petitioners, in which there had been the occupants and the occupants thereof had been the lessees of the pensioners paying the rents. Apart from the said permanent and semi-permanent structures, which had been in the occupation of the tenants, there are residential houses of the petitioners and so also the opthalraic units including the hospital. There is not even a whisper that the area on which a large complex is there, is either lowlying, insanitary or squalid. The word "otherwise" employed in Section 3(1) of the Slum Act has to be read ejusdem generis to the preceding words lowlying, insanitary and squalid, which only means likewise. But, there is no material to come to the conclusion that even the ejusdem generis can be applied. Contrary, the property is the private property of the petitioners devolved upon them through their ancestors and divided among themselves in a civil action mentioned supra. The petitioners had raised huge constructions after obtaining the sanction from the Municipal Corporation of Hyderabad vide Permit Nos.52/66, dated 27-3-1978, 87/8 dated 30-5-1978 and 101/67 dated 17-11-1980. The

hospital and the allied opthalmic units have been established in the said structures constructed and in fact, when the Municipal Corporation of Hyderabad had unduly interfered with the last construction, the petitioners had instituted a suit in OS No. 961 of 1986 on the file of Court of IX Assistant Judge, City Civil Court, Hyderabad, in which, initially temporary injunction orders were granted in the year 1986 and then the suit itself was decreed, after contest, by judgment dated 27-2-1991. It is not disputed by the respondents that the said decree had become final. In fact, further developments are proposed by expanding the hospital and the allied units, but some tenants, who had been litigating unduly, have not vacated, while only some tenants have vacated. Such tenants, who did not vacate and at the instance of the busy bodies and Trade Unions, have exerted influence on the Government and the Municipal Corporation of Hyderabad and got initiated the untenable proceedings under the Slum Act resulting in the issuance of the impugned notifications. In any event, the action of the petitioners clearly proves beyond any shadow of doubt that they do not want to keep any tenant in possession and they want to develop the area into a big opthalmic hospital to cater to the needs of scores of public and particularly in a over-populated country like us, to render the necessary medical and humane services and that too in a medical field concerning the vision, which is most important of all the functions of a human being.

10. The property in question is in the area declared as commercial zone. In fact, on the front side of the complex of the petitioners and abutting the main road leading from Mozamjahi Market to Abids, there are shops occupied by the tenants for non-residential purpose, behind are the premises belonging to the petitioners bearing Municipal Nos.5-4-52/1, 5-4-70, 71, 74, 84 and 146. Further behind is the hospital and allied units and scattered structures in the complex are occupied by the tenants in the premises bearing Municipal Nos.5-4-55/7 & 8, 5-4-61/1, 61/2, 5-4-62, 5-4-64, 5-4-64/1, 5-4-86, 5-4-89, 5-4-90, 5-4-91, 5-4-92, 5-4-89/A, 5-4-102, 5-4-102/1, 5-4-104, 5-4-127, 5-4-136, 54-138, 5-4-142, 54-149, 5-4-162/A, 167/1, 169, 170, 171, 172, 173, 176, 177, 180, 182 and 182/1 in which the tenants have been in possession, had vacated the same. The other tenants against whom the eviction orders have not become final and some other tenants against whom the cases are pending, are in possession of the premises. Even from the counter affidavit filed by the Commissioner, Municipal Corporation of Hyderabad, it is evident that pucca buildings are not going to be acquired and only some of such semi-structures which are described as slums by the Municipal Corporation have been declared as slum areas. It is strange that the Commissioner, Municipal Corporation of Hyderabad, in his counter affidavit states that the Municipal Corporation appreciates the presence of the first petitioner in all writ petitions as eminent Opthamologist residing at the premises and that establishing further improvised hospital is fair enough, but decision to evict the poor slum dwellers staying therein since a long time and who are doing petty business and working as labourers in the surrounding locality is not laudable. We do not approve such a stand of the Municipal

Corporation of Hyderabad. The petitioners are not taking law into their own hands to evict their tenants. The relations of petitioners as landlords with their tenants is outside the purview of the Slum Act. The expanding family of the petitioners and their progressive views to serve the society and the resultant personal requirement, which is one of the criterion to evict the tenants, is best left to the landlords like the petitioners and no interference or fetters can be caused by the Municipal Corporation of Hyderabad into such exercise of rights by the petitioners in the capacity of landlords as against their tenants. The law permits the petitioners to evict their tenants on the grounds proved and here is a case where the tenants have suffered the orders of eviction and some more cases are pending and the stand of the Municipal Corporation that regardless of such eviction orders and such pendency of the cases before the Courts of law, they will declare the said lands as slums so as to scuttle the orders of eviction and legal proceedings, amounts to affront to rule of law and is thus unsustainable. In this regard, the decision rendered by one of us (B. Subhashan Reddy, J) in Ch. Suryanarayana Murthy v. Govt. of A.P. 1993 (1) APLJ 253, is relevant, in which, after the land grabbers were ordered to be evicted by the judicial authority, the provisions of the Slum Act were invoked; but the same was quashed on the ground that it is an affront to the judicial decision and that Slum Act cannot be invoked to nullify the judicial decision. The facts of the said case have bearing in this case and the principles laid down in the said decision are applicable here also. Further, there was total non-application of mind while issuing the impugned notifications, as the District Social Welfare Officer, who is also an officer concerned with the social justice and welfare of the down-trodden while addressing a letter to the Collector, Hyderabad, on 20-7-1981 made it so abundantly clear that the scattered area belonging to the petitioners, which admeasures Ac.1.10 gts., in the context of the slum area identified by the Municipal Corporation, after lay-out plan is prepared and 1/3rd area is left out for roads and other facilities, will be insufficient to accommodate the families, that huge compensation is to be payable as the rate was not less than couple of thousands of rupees per yard as on that date, that alternative land of Ac.50.00 gts. is available in Santhoshnagar, which has been declared as a surplus land under the Urban land (Ceiling and Regulation) Act, and that steps to be taken to pursue to take over that land at Santhoshnagar. Further important facts are that on 15-1-1982, the Director of Urban Community Development, Municipal Corporation of Hyderabad, has addressed a letter to the first petitioner in all writ petitions that the slum area has been declared in the property belonging to the adjoining Housing Board and not in the land of the petitioners. It is apt to extract the relevant portion of the above letter :

"With reference to your representation dated 6-11-1981 I am to inform you that the area covered by the Housing Board land on which the people are squatting is included in the slum. The area on the private land inside your compound is not proposed for improvement under the Slum Development Programme of the Municipal Corporation of Hyderabad. Since you want to develop it yourself by

clearing the slum within one year, we do not propose to notify it under slum improvement."

Yet another communication, which assumes importance is the one addressed by the Special Officer of Municipal Corporation of Hyderabad to the Joint Secretary to Government, Housing, Municipal Administration and Urban Development Department, dated 28-6-1985, which is extracted below:

"With reference to the DO Letter cited, I am to state that the land on which Murlidhar Bagh Slum is situated consists of two parts viz., Housing Board land and private land belonging to Dr. Shyam Sunder Pershad's family.

The Collector, Hyderabad, communicated a list of 56 slums including Murlidhar Bagh to the MCH in October, 1983 requesting for notification under the A.P. Slum Improvement Act while the issue was under consideration, Dr. Shyam Sunder Pershad has represented to the Special Officer, MCH that he has plans to construct an Eye Hospital on the land belonging to him (Private portion of land) and, therefore, it should not be notified under the A.P. Slum Improvement Act. The MCH has accordingly proposed to notify the Housing Board portion of the land to accommodate all the families. The Housing Board was also requested to issue house site pattas to the families living on the Board's land.

In this regard, a letter from MCH bearing No. 572/UCD/D/83, dated 10-2-1984 was addressed to the Secretary to Government, Housing, Municipal Administration and Urban Development Department, Government of A.P. requesting to issue orders regarding notification of Housing Board land at Murlidhar Bagh Government orders are yet to be received in the matter".

In the counter-affidavit filed, the Commissioner, Municipal Corporation of Hyderabad, has also taken a stand that even though permissions have been granted for making constructions, the same were stopped after sometime. But, this is in ignorance of the interference by the Municipal Corporation of Hyderabad, which led to the filing of the civil suit impugning the notices issued u/s 452 of the Municipal Corporation of Hyderabad Act. In this connection, it is relevant to extract the Proceedings of the Commissioner, Municipal Corporation of Hyderabad, dated 18-9-1991.

"Copy of the Commissioner, Municipal Corporation of Hyderabad Lr.No. 572/ UCD/LA/82-1147, dated 18-9-1991. Sir,

Sub :--UCD., MCH., Muratidhar Bagh Slum - Certain instructions issued - Reg.

In the review meeting of Muralidhar Bagh Slum held on 7-9-1991, it is found that permissions have been issued for constructions in this slum area.

You are, therefore, requested not to issue any construction permissions in slum area and also to cancel the permission, if already issued.

Sd/- Commissioner Municipal Corporation of Hyd".

11. The above factors have been completely ignored and without there being any material to get satisfied to issue declaration u/s 3(1) of the Slum Act, the impugned notifications have been issued. The word "satisfied" and which has been underlined by us and emphasis laid, does not connote a subjective satisfaction. It connotes objective satisfaction of there being material to form an opinion to declare an area as a slum area. Deprivation of property of a person, which is an enabling provision for the State and disabling provision for a citizen needs strict construction. Declaration u/s 3(1) of the Slum Act cannot be lightly made unless the authorities are satisfied and the word "satisfied" has been interpreted in several decisions. But, we need not burden this judgment with all the plethora of precedents. Suffice it to mention 4 judicial precedents out of which 3 are of the High Courts and fourth, which is latest, is that of the Supreme Court.

12. In *Ratan Roy Vs. State of Bihar and Others*, , it was held that wherever a legislation uses the word "satisfied" it must mean reasonably satisfied and it cannot import an arbitrary or irrational state of being satisfied.

13. In *Chandreshwari Prasad Narain Deo and Others Vs. State of Bihar and Another*, , a Division Bench of Patna High Court took the same view that the word "satisfied" must be construed to mean reasonably satisfied and that the finding of the Collector u/s 4(h) of Bihar Land Reforms Act cannot be a subjective or arbitrary finding, but must be based upon the adequate material. It was held that it cannot be a capricious satisfaction, but must be capable of being tested in an objective manner. Similar was the view taken by Punjab High Court in *Faqir Chand Sultani Ram and Another Vs. Bhana Ram Mansa Ram and Others*, . The said views expressed by the above High Courts find approval by the Supreme Court in *S.R. Bommai and others Vs. Union of India and others etc. etc.*, . The Supreme Court, in the above decision, interpreting the word "satisfied" employed in Article 356(1) of the Constitution held:

"The word "satisfied" has been defined in Shorter Oxford English Dictionary (3rd Edition) at page 1792 as "4. To furnish with sufficient proof or information, to set free from doubt or uncertainty, to convince; 5. To answer sufficiently (an objection, question); to fulfil or comply with (a request); to solve (a doubt, difficulty); 6. To answer the requirements of (a state of things, hypothesis etc.); to accord with (condition). Hence, it is not the personal whim, wish, view or opinion or the ipse dixit of the President de hors the material, but a legitimate inference drawn from the material placed before him which is relevant for the purpose. In other words, the President has to be convinced of or has to have sufficient proof, information with regard to or has to be free from doubt or uncertainty about the state of things indicating that the situation in question has arisen. Although, therefore, the sufficiency or otherwise of the material cannot be questioned, the legitimacy of inference drawn from such material is certainly open to judicial review."

14. In view of the facts stated above from which there cannot be even an

inference that the property in the instant cases can be declared as slum area and applying the above legal principles enunciated to the word "satisfied" employed in Section 3(1) of the Slum Act, we are not in doubt as to the total non-application of mind on the part of the Municipal Corporation of Hyderabad in declaring the property in question as slum area. The impugned notifications dated 14-10-1987 and 4-12-1991 are thus held as illegal and are accordingly set aside. Insofar as Writ Petition No. 9668 of 1987 is concerned, the petitioners are entitled for directions against the respondent from suo motu providing any amenities, unless there are specific directives issued by any competent Court of law having jurisdiction in that regard. However, the Slum Area Occupancy Certificates issued by respondents 1 and 2 of the premises bearing No. 5-4-51 to 5-4-108 and 5-4-123 to 5-4-182/1 situated at Murlidhar Bagh, Hyderabad are held to be void.

15. The writ petitions are thus allowed to the extent indicated above. No costs .