

**(2001) 04 AP CK 0067**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 8026 of 2001**

G. Santhamma

APPELLANT

Vs

Cantonment Board, Secunderabad

RESPONDENT

**Date of Decision : 27-04-2001**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : AIR 2001 AP 488 : (2001) 4 ALD 57 : (2001) 4 ALT 12**

**Hon'ble Judges : S.R. Nayak, J;S. Anand Reddy, J**

**Bench : Division Bench**

**Advocate : Mrs. M. Venkateswari, for the Appellant; Mr. Deepak Bhattacharjee, for the Respondent**

## **Judgement**

S.R. Nayak, J.—The case of the petitioner, to put in her own words, is the following:

"2. I humbly submit that 45 years back the room bearing No.3-3-320/B which is on the eastern side of house bearing No.3-3-320/A, Picket, Secunderabad was situated in a slum area and recently the said area has developed. When it was slums I have put a small hut and started residing in the said room bearing No.3-3-320/B which is constructed in a land admeasuring to an extent of 25 Sq.yards situated at Picket, Secunderabad alongwith my family since 45 years. Subsequently as it has become impossible to reside in the said hut due to its dilapidated condition I was compelled to construct a pucca room, covering with asbestos sheets in the said 25 Sq.yards. In fact I was tenant of the house bearing No.3-3-320/A, Picket, Secunderabad for a period of 45 years and recently I was evicted from the said premises and as such today my family is not having a roof under the sky except the room for which I am seeking relief.

3. I humbly submit that as it is a slum area, no tax was assessed to my room where I was living since 45 years but at present the area has been developed and I am also in a position to pay a reasonable tax to the property in which I am in possession and occupation since 45 years. I am a poor old widow lady and I

am also having unmarried daughter and we both are dependents on my son who is eking his livelihood by driving an auto. In this financial state of condition it is highly impossible for a family like ours which is a lower middle class family to find out a small hut constructed in a 25 Sq.yards in this city where the value of lands have reached the sky.

4. I humbly submit that as such I made a representation to the Cantonment Board on 10-11-2000 requesting and praying the authority to a reasonable tax may be assessed to my property by allotting a new door number to the room bearing No.3-3-320/B which is on the eastern side of the house bearing No.3-3-320/A constructed in a land admeasuring to an extent of 25 Sq.yards at Picket, Secunderabad. I also requested them to consider my representation sympathetically as I am very poor lady and who cannot afford to purchase any land or pay rents to the rental house and I also requested them to consider my representation on the ground that I am residing in the said room since 45 years i.e., since 1958 till date without any interruption from the respondent.

5. I humbly submit that it is pertinent to state that the respondent was kind enough to permit me to reside in the said area since 45 years by considering my financial status. They have never disturbed me and subjected me to any type of harassment all these years. As my financial status has increased to a little extent and also the area developed I thought it is my bounden duty to pay tax to the property in which I am in occupation since 45 years and as such I made the said representation to the respondent on 10-11-2000. Very unfortunately the respondent has not reacted to the representation dated 10-11-2000, since six months and failed to consider my prayer. If my representation is considered in a sympathetic view I can lead dignified life and enjoy certain facilities like performing the marriage of my daughter, having standard address to my family etc., on par with the other members of the society. If my representation is not considered I shall be put to irreparable loss and injury. Once again I am to bring to the notice of the Court that it is I who has given information to the respondent that I am residing in the said premises since 45 years as I am interested in paying the tax to the respondent as a law abiding citizen".

2. The representation dated 10-11-2000 of the petitioner submitted to the Executive Officer, Cantonment Board, Secunderabad reads:

"To

The Executive Officer, Cantonment Board, Secunderabad,

Sir,

I am residing in a room with asbestos sheets roofing in Slum Area on the eastern side of house bearing No.3-3-320/A abutting the road for the last more than 45 years which was a hut in 1958 and thereafter due to dilapidated condition of the hut it was removed and a room admeasuring 10 ft x 12 ft with little open space around about 25 Sq.yards situate in Picket, Secunderabad -500

009.

I submit that as it is a Slum Area no tax was assessed to my said room and now it has been developed and I am in a position to pay a reasonable tax to my above said room where I am residing with my son and daughter and we are both dependent on my son who is eking his livelihood by driving the auto.

I therefore request you Sir, to kindly sympathise with my poverty and reasonable tax may be assessed and I may be allotted Door number as I am residing in the said room for the last 45 years ever since 1958 till date so that I can enjoy certain facilities in the society and in the banks.

Your's faithfully,

(G. Shantamma) W/o Late G. Gandaiah

Secunderabad, Dt: 10-11-2000"

3. In this factual background, the petitioner has sought for the following relief in this writ petition:

"For the reasons and circumstances stated in the accompanying affidavit it is prayed that this Hon"ble Court may be pleased to issue writ of mandamus declaring the action of the respondent in not considering the representation dated 10-11-2000 in a sympathetic way is illegal, unconstitutional and contrary to the provisions of Cantonment Board Act and consequently direct the respondent to consider the representation dated 10-11-2000 and pass such other order or orders as this Hon"ble Court deems fit and proper in the said circumstances of the case."

4. When this writ petition was heard by us for admission on 24-4-2001, we pointedly asked Mrs. M. Venkateswari, learned Counsel for the petitioner as to under what provisions of the Cantonments Act, 1924 (for short "the Act"), the representation dated 10-11-2000 was made to the Executive Officer of the Cantonment Board and which is the provision of that Act that grants a right to be considered to the petitioner. The learned Counsel was not in a position to answer the query of the Court, and therefore, she prayed for time to examine the provisions of the Act and make submission. Accordingly, the Court adjourned the case to 27-4-2001. Even today, in the course of hearing, the learned Counsel was not in a position to show us any provisions of the Act under which the representation was made or any provision of the Act under which the petitioner can possibly claim a right to be considered visa-vis her representation dated 10-11-2000. However, the learned Counsel for the petitioner would submit that the petitioner alongwith her family members had been staying for the last more than 45 years till she was evicted from the premises recently, and therefore, she, in law, is entitled to be in possession and occupation of the land. The Counsel would also submit that no prejudice would be caused to the respondent Board by directing it to consider the representation of the petitioner dated 10-11-2000,

5. After hearing the learned Counsel for the parties, we are of the considered opinion that this writ petition is not maintainable for more than one reason. Firstly, the representation made by the petitioner on 10-11-2000 to the Executive Officer of the Cantonment Board is an extra-legal" petition in nature. The question before the Court is not whether the Cantonment Board would be prejudiced or inconvenienced if the Court is to issue a direction to consider and dispose of the representation of the petitioner, rather the question is whether this Court, in exercise of its discretionary power under Article 226 of the Constitution of India can issue such a direction to a statutory authority like the respondent Board herein when the mover of the writ application does not establish a right to be considered.

6. This Court speaking through one of us (S.R. Nayak, J) in Water Users" Association, Peddacheruvu, Maddulaparva Village, Krishna District Vs. District Collector, Krishna District and others, , dealing with a prayer to issue a direction to a public authority to consider an extra-legal petition has observed:

"2. The Court can take notice of the fact that large number of writ petitions are filed in this Court seeking directions to the public authorities to consider and dispose of extra-legal letters, petitions, representations within time-frame. This case is one of such cases where such a request is made for a direction to the respondents to consider an extra-legal representation. The question which falls for consideration is whether such requests can be granted by this Court by virtue of the power conferred upon it under Article 226 of the Constitution of India. Although Article 226 of the Constitution of India speaks about the power of this Court to issue not only prerogative writs, but also orders or writs for the enforcement of any of the rights conferred by Part III and for any other purpose, it is well settled that Writs or Orders can be issued only for the enforcement of fundamental rights or other rights. The Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta, , The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and in *Fertilizer Corporation Kamnagar Union (Regd.) Sindri and others v. Union of India and others* AIR 1981 SC 344, while interpreting the phrase "any other purpose", in short, means the "enforcement of any legal right" and the "performance of any legal duty". A right to be considered is also a legal right which can be enforced under Article 226 of the Constitution of India. On the other hand, if the Court finds that a representation or a letter or a correspondence or a petition filed before a public authority is extra-legal, no direction can be issued to such public authority to consider and dispose of such representation or petition or correspondence under Article 226 of the Constitution of India. The Court can also take notice of the fact that in some cases where directions were issued to consider and dispose of extra-legal, representations, petitions, correspondence or letters to the public authorities within a time-frame, and when those public authorities could not carry out the directions within the stipulated time, they are hauled up in the contempt cases. In a Social Welfare State, it is trite to state that the public authorities receive thousands of representations, applications, petitions which are extra-legal in

nature seeking favours, benefits and expressing grievances, and seeking intervention and support of the State and State authorities. If the Court were to issue directions in all such cases to the public authorities to consider and dispose of the petitions, applications which are extra-legal in nature, thereby I mean, not made or submitted under any provision of law obligating the authorities to consider, the authorities may not find time to discharge their essential duties and functions entrusted to them by law, and the efficacy of administration will suffer".

7. In the premise of the afore mentioned principles stated with which we are in agreement, let us now advert to the facts of this case. What we find from the averments made in the affidavit filed in support of the writ petition is that after the petitioner made representation on 10-11-2000, it seems, the authorities of the Cantonment Board evicted the petitioner from the subject premises. Eviction of unauthorized persons from the properties of the Cantonment Board is a statutory action contemplated under the Act. The petitioner for the reasons best known to her has not chosen to assail the validity of the eviction of the petitioner from the subject property. On that count itself, directing the Cantonment Board to consider the representation of the petitioner dated 10-11-2000 does not arise. Secondly, if the petitioner before eviction had been in long continuous possession for more than 45 years with the knowledge of the Cantonment Board as claimed by the petitioner's Counsel and thereby perfected her title to the property, she would work out her legal remedies invoking the jurisdiction of the civil Court for declaratory decree and injunction.

8. Be that as it may, the representation made by the petitioner on 10-11-2000, in our considered opinion, is extra-legal in nature and therefore for the reasons stated by us supra, no writ will go to the respondent-Cantonment Board to consider and dispose of the said representation. Although Chapter VI of the Act deals with Cantonment Fund and Property, we do not find any provision in that Chapter which enables the Cantonment Board to regularise the illegal encroachment and occupation of persons. At any rate, there is no provision in that Chapter which enables an encroacher or an unauthorized occupier of the land of the Cantonment Board to make application to the Executive Officer of the Cantonment Board seeking regularisation of such unauthorised occupation or encroachment. The petitioner has utterly failed to establish that she has a right to be considered either for regularization of her unauthorised occupation of the property of the Cantonment Board or unauthorised construction made by her on that land. If the petitioner does not have a right to be considered, it goes without saying that the Executive Officer of the Cantonment Board is under no obligation to consider the representation of the petitioner dated 10-11-2000. If the Executive Officer of the Cantonment Board is under no legal obligation to consider the representation of the petitioner dated 10-11-2000, no direction will go from this Court under Article 226 to consider such non-legal representation.

9. In the result and for the foregoing reasons, we dismiss the writ petition with no order as to costs. However, we make it clear that this order shall not come in

the way of the petitioner seeking private law review remedies like declaration, injunction or damage as the case may be, if she is so advised and if she has any such right to claim those remedies.