
(2001) 06 AP CK 0117
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 925 of 2001

Kolluru Gopal

APPELLANT

Vs

Govt. of A.P. and Another

RESPONDENT

Date of Decision : 29-06-2001

Acts Referred:

Andhra Pradesh Slum Improvement (Acquisition of Land) (Amendment) Act, 1981 — Section 1(3)
Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 — Section 1(3), 3(1), 3(4)
Constitution of India, 1950 — Article 226, 243D

Citation : (2001) 4 ALD 543 : (2001) 5 ALT 746

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; A.G. for Respondent No. 1 and T.S. Venkata Ramana, S.C. for Municipal Corpn., for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—The question as to whether a fresh notification is necessary for enforcement of the provisions of Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956 after the 2nd respondent-Municipal Corporation had come into being is the question involved in this appeal.

2. The appellant-writ petitioner owns land to the extent of 406 Sq. yds. of land in T.S.No. 270/1-A para and 531 Sq.yds in T.S.No 266 part in Market ward, Periki veedhi, Block No. 9, Visakhapatnam. The land is situated in a prime area. The premises consists of building and a hut and the same had been let out to a tenant who in turn illegally sublet the same to a number of tenants who put up huts in the land. It is alleged that at the instance of some of the Councilors, the then Visakhapatam Municipal Council passed a resolution on 12-7-1970 for acquiring the said land under the A.P. Slum Improvement (Acquisition of Land)Act, 1956 (for short "the Slum Act") and a notification thereof was published in Andhra Pradesh Gazette on 20-9-1990 declaring the said lands as a

slum area coming within the purview of Section 3(1) of the Act with a view to acquire the lands comprised in the said area for undertaking the execution of work designed to improve the area in the interest of public health, safety or convenience of its neighbourhood. The 2nd respondent thereafter by reason of the impugned show cause notice dated 30-8-1991, issued in exercise of the powers u/s 3(4) of the said Slum Act called upon the appellant-writ petitioner to show-cause as to why the land in question should not be acquired for the above purpose and to file his objection, if any, thereof. It is contended that the land sought to be acquired does not fall within the definition of slum area as it is neither in low lying area nor it is in an unsanitary or squalid locality and there was excess delegation of power by the Government to the Municipal Commissioner to acquire any area declaring the same as slum area.

3. The contention of the petitioner is that since the provisions of the Slum Act were made applicable to the limits of Municipality and as the Municipal Corporation of Hyderabad had come into existence on 16-4-1979, the provisions of the Slum Act cannot be made applicable in the facts and circumstances of the case.

4. The learned Single Judge dismissed the Writ Petition holding that as Slum Act has been extended to the whole of the State of Andhra Pradesh, it was not necessary to extend the provisions thereof to the Municipal Corporation and there was no excess delegation of powers.

5. The vires of the Slum Act has not been questioned before us. Section 1 of the said Act reads thus;

Short title extent and commencement; (1) This Act may be called the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956.

2. It extends to the whole of the State of Andhra Pradesh.

3. It shall come into force in any Municipal Corporation or Municipality in the State on such date as the Government may, by notification in the Andhra Pradesh Gazette appoint.

Provided that, before issuing such notification the Government shall publish in the Andhra Pradesh Gazette, a notice of their intention to do so, fix a period which shall not be less than two months from the date of publication of the notice for the Municipal Corporation or the Municipality concerned to show-cause against the issue of the notification and consider its objections, if any.

6. The Government of Andhra Pradesh by reason of G.O.Ms.No. 177 Housing dated 27-8-1962 issued notification extending the provisions of the Slum Act to all the Municipalities in the State including the Visakhapatnam Municipality. The Municipal Corporation of Visakhapatnam was established by virtue of the Visakhapatnam Municipal Corporation Act, 1979 (for short "the Corporation Act") which came into force with effect from 16-4-1979. According to the learned Counsel, as by reason of the provisions of the said Act, the provisions of A.P

Municipalities Act are not applicable, the notification extending the provisions of the Slum Act to Visakhapatam Municipality has come to an end.

7. The said submission cannot be accepted. By reason of Act No. 35 of 1981, Sub-section (3) of Section 1 of the said Act was amended incorporating the words "in any Municipal Corporation or Municipality in the State" as quoted above for the words "in any municipality in the State". Therefore, it can safely be construed that by virtue of Act No. 35 of 1981, the provisions of Slum Act have been made applicable to the Municipal Corporation of Visakhapatam. Further by reason of Section 7 of the Corporation Act, the provisions of Hyderabad Municipal Corporation Act, 1955 have been mutatis mutandis made applicable to the Municipal Corporation of Visakhapatam.

8. Further, Section 8 of the Visakhapatam Municipal Corporation Act, which deals with transitional provisions, reads thus:

All property, all rights of whatever kind used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for the Council with all rights of whatever kind used, enjoyed or possessed by the said Council as well as all liabilities legally subsisting against the said Council, shall, on and from the commencement of the Act and subject to such direction as the Government may, by general or special order, give in this behalf, pass to the Corporation.

9. Therefore, as per the transitional provisions u/s 8 of Corporation Act, the Municipal Corporation of Visakhapatam has been conferred with all powers, which the erstwhile Visakhapatam Municipality was enjoying prior to the establishment of the Visakhapatam Municipal Corporation.

10. The right to enforce the provisions of the Slum Area Act being statutory in nature, by reason of the aforementioned provisions, such right, in our considered opinion, could be exercisable also by the Municipal Corporation.

11. The submission of the learned Counsel to the effect that as the amendment to Section 1(3) of the Act as regards the Municipal Corporation was inserted later on, it must be held, that prior thereto no notification could be issued extending the provisions of the Slum Area Act to Municipal Corporation cannot be accepted. Prior to the establishment of the Corporation, the Visakhapatam Municipality was exercising the power under the said Act and such statutory power in terms of the transitional provisions u/s 8 of the Visakhapatam Municipal Corporation Act stood transferred to the Municipal Corporation. The amendment made in Section 1(3) of the said Act in the year 1981 was only by way of abundant caution as by that time several Municipal Corporations came into being in the State. Only because such amendment took place in the year 1981, it cannot be said that prior thereto, the Municipal Corporation had no authority to enforce the provisions of the Slum Area Act nor can it be said that despite the fact that it used to enjoy the said power in terms of Section 8 of the Corporation Act, it will cease to have any effect.

12. We may notice that in terms of Article 243-D of the Constitution of India, the Municipality includes "Municipal Corporation". Furthermore, if any power exercised by a statutory body stood transferred to a newly constituted statutory body by reason of a statutory provision, in our considered opinion, it is not necessary to issue a fresh notification for exercise of such power by the newly established statutory body.

13. Further, the Municipal Corporation in the counter filed by the 2nd respondent disputes the ownership of the appellant to the extent of 531 Sq. yds. situate in T.S. No. 266 part and it was categorically stated that the said land belongs to the Municipal Corporation. This Court, exercising the jurisdiction under Article 226 of the Constitution of India cannot go into such disputed questions of fact.

14. For the reasons aforesaid, we are of the opinion that there is no merit in this appeal, which is accordingly dismissed. There shall be no order as to costs.