

(2000) 08 AP CK 0036
In the Andhra Pradesh High Court
Case No : Writ Petition No. 14120 of 2000

P. Shivaji

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Andhra Pradesh Public (Eviction off Unauthorised) (Amendment) Act, 1978 — Section 3
Andhra Pradesh Public Premises (Eviction of Un-Authorised Occupants) Act, 1968 —
Section 3

Citation : (2000) 5 ALD 380 : (2000) 5 ALT 96

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. T. Lakshminarayana, for the Appellant; Government Pleader, for Municipal Administration and Mr. T. Niranjan Reddy, SC for HUDA, for the Respondent

Judgement

1. The petitioner impugnes a notification issued by the 1st respondent in exercise of the powers u/s 3 of Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1968 (for brevity, "the Act") vide G.O. Ms No.253, Municipal Administration and Urban Development (11) Department, dated 2-6-1999. The notification reads as under:

"In exercise of the powers conferred by Section 3 of the Andhra Pradesh Public (Eviction of Unauthorised) Act, 1978 (Act No. 20 of 1968), the Government of Andhra Pradesh hereby empowers the Estate Officer or any other Officer discharging the functions of the Estate Officer not below the rank of Deputy Collector being Gazetted Officers to exercise the powers and perform the duties imposed on the Estate Officer under the Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1968 within the jurisdiction of Hyderabad Urban Development Authority"

The said notification is challenged on the ground that there is no Andhra Pradesh Public (Eviction of Unauthorised) Act, 1978 and, therefore, the notification which

is purported to have been issued under Sections of the 1978 Act is illegal and cannot survive. Secondly, it is challenged on the ground that there is ambiguity and vagueness in the notification. Before appreciating these submissions, it is necessary to notice the facts in brief.

2. The petitioner was inducted as a lessee by Andhra Pradesh Travel and Tourism Development Corporation (Travel Corporation) on 26-9-1988 in respect of a Cafeteria admeasuring 850 sq.ft., of built up portion along 1100 sq.ft., of vacant land. In due course of time, Hyderabad Urban Development Authority (HUDA) succeeded to the said Cafeteria and open land, which was given on lease to the petitioner. To cut the long story short, on 26-11-1994, HUDA issue eviction notice to the petitioner requesting to vacate the land. As the petitioner did not vacate the land, it appears and it is alleged that the HUDA tried to prevent the petitioner from running the business in the Cafeteria. Then he approached the Civil Court in OS No.4985 of 1991 on the file of the Court of the X Assistant Judge, City Civil Court, Hyderabad. The suit was dismissed on 16-8-1995 as HUDA, the defendant in the suit, appears to have stated before the Court that any action for eviction of the petitioner would be taken in accordance with law. While the suit is pending, the petitioner was proceeded with action under the Act. The petitioner, it is alleged, also filed a Writ Petition being Writ Petition No.22852 of 1994 before this Court which was also dismissed. There was a CMA No.33 of 1995 by the petitioner against the HUDA and another CMA No.35 of 1995 was filed by HUDA against the petitioner besides a suit by the petitioner, being OS No.5125 of 1994 on the file of the X Junior Civil Judge, which was also dismissed on 8-11-1999. For the purpose of this writ petition, it may not be necessary to consider the effect of various Court orders on the issue in this case.

3. The fact remains that a final notice bearing No.5331/EMC/HUDA/2000 dated 1-7-2000 was issued under sub-section (1) of Section 4 of the Act to the petitioner to show cause as to why he should not be evicted from the public premises and he was asked to appear on 18-7-2000. The petitioner appeared on 18-7-2000. The Estate Officer, the 3rd respondent herein, issued another notice to the petitioner on 20-7-2000 to appear on 21-7-2000. On 21-7-2000 orders were passed evicting the petitioner. Against the same, the petitioner appears to have approached the appellate authority namely the Chief Judge, City Civil Court u/s 9 of the Act and the same is pending.

4. The 3rd respondent is the Estate Officer for the purpose of Section 2(aa) of the Act and he was appointed by virtue of the impugned notification. It is not denied that the 3rd respondent is holding the rank of Deputy Collector. Therefore, no objection can be taken for his appointment as Estate Officer.

5. What is contended before this Court, as already noticed, is that there is no such Act called Andhra Pradesh Public (Eviction of Unauthorised) Act, 1978. This submission is wholly misconceived. No doubt, the Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1968 was wrongly typed in the notification, but, immediately after the Act, the words "Act No.20 of 1968"

are included, which makes it abundantly clear that the notification refers to Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1968. Further, it is well settled that a notification cannot be set aside merely on the ground of mentioning of wrong provision of law under which the notification is issued.

6. Secondly, it is contended that the notification says that Estate Officer or any other Officer discharging the functions of an Estate Officer, not below the rank of a Deputy Collector, being Gazetted Officers, shall alone be Estate Officers within the jurisdiction of HUDA. Objection is taken by the learned Counsel for the petitioner that when there is no Estate Officer at all, the question of again visualising an Estate Officer who is not below the rank of a Deputy Collector, being Gazetted Officer, does not arise.

7. Learned Counsel for the petitioner also invited attention of this Court to another notification issued under G.O. Ms. No.196, Transport, Roads and Buildings (B.II/I) dated 4-6-1984 by which the Government designated all Tahsildars in the State of Andhra Pradesh, except in Hyderabad and Secunderabad, as Estate Officers within the respective jurisdictions for the purpose of the Act. This notification does not help the petitioner. In respect of other places, the Government issued a notification u/s 3 of the Act designating the Tahsildars as Estate Officers except for Hyderabad and Secunderabad. In this case, the impugned notification was issued as requested by the Vice-Chairman, HUDA in his letter dated 16-12-1998 (as can be seen in the reference entry in G.O. Ms. No.253) designating only Deputy Collectors as Estate Officers for the purpose of HUDA. This also indicates that all the Estate Officers, who were exercising jurisdiction in HUDA, will continue to be Estate Officers provided they are not below the rank of Deputy Collectors and Gazetted Officers. That is the purport of the G.O. Therefore, I hold that there is no vagueness or ambiguity in the G.O.

8. It is well settled that the power to delegate statutory functions should be specific in the parent Act. A notification delegating powers ordinarily can be challenged only on the ground of excessive delegation or on the ground that the delegation itself is ultra vires the provisions of the parent Act. None of these infirmities are present in the notification. This writ petition, according to me, is filed by the petitioner only with a view to perpetuate his illegal and unauthorised occupation of the public property. In fact, when the petitioner filed a written statement/counter before the Estate Officer, he did not raise this ground at all.

9. In the result, the writ petition fails and the same is accordingly dismissed at the admission stage.