
(2003) 08 AP CK 0020
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5937 of 2003

P.S. Sudershan

APPELLANT

Vs

Secunderabad Cantonment Board and Another

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5

Citation : (2003) 5 ALD 595

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

Bench : Single Bench

Advocate : P. Venugopal, for the Appellant; Deepak Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—Though interlocutory applications are listed, with the consent of the learned Counsel for the parties, the writ petition itself was heard finally and is being disposed of.

2. The petitioner challenges the order of the learned Chief Judge, City Civil Court, Hyderabad, dated 11.2.2003 in C.MA No. 274 of 2001, confirming the order of the Estate Officer of Cantonment Board ordering the petitioner to remove the encroachments in 139 Sq.yards in (General Land Register Survey Number) GLR S.No. 317/457. The order of the Estate Officer was passed u/s 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Central Act No. 40 of 1971) (for short, the Act) and the appellate order was passed u/s 9 of the Act.

3. The case of the petitioner is that the land in question belongs to Mahankali Temple, Secunderabad. As the respondent was interfering with the possession of the land on an impression that the land belongs to Cantonment Board, he made a representation to regularize the occupation as the area involved is a small extent. The petitioner also contends that he is carrying on business in the land comprised in GLR. S.No. 317, which is belongs to Mahankali Temple and the

respondent has no manner of right to initiate proceedings u/s 5 of the Act. After receiving notice from the Estate Officer, who is not made a party to the proceedings, the petitioner submitted an explanation contending that the land in possession is not public premises, that the GLR is not specific about the description of the land, and that the classification of the land by the Cantonment Board is improper. The Cantonment Board produced the true extract of GLR, which is maintained under Land Administration Rules framed under the provisions of the Cantonment Act, 1924. The Estate Officer placing reliance on the judgment of the Supreme Court in Chief Executive Officer Vs. Surendra Kumar Vakil and Others, , and comparing GLR extract as prima facie proof of title of Central Government, ordered eviction of the petitioner.

4. Before the appellate authority, namely, Chief Judge, City Civil Court, Hyderabad, in C.M.A. No. 274 of 2001 the petitioner contended that the suit filed by the petitioner being O.S.No. 49 of 1997 for perpetual injunction is pending and therefore he cannot be evicted. On comparing GLR, which is marked as Ex.A.1 and also Ex.A.2, plan, the appellate authority recorded a finding that the land in respect of which the petitioner suffered order from the Estate Officer is altogether different from the land he claimed to belong to Mahankali Temple. The appellate authority came to the conclusion that the land claimed by Cantonment Board is in GLR S.No. 317/457 whereas the petitioner claims land in S.No. 316 as belonging to Mahankali Temple. The finding recorded is a question of fact and hence no interference is called for in these proceedings for certiorari.

5. There is yet another reason to reject the writ petition by this Court. Mahankali Temple filed R.C. No. 305 of 1999 on the file of the Court of Principal Rent Controller, Secunderabad, u/s 10(2)(i) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, for eviction of the petitioner herein on the ground of willful default. In the counter-filed therein, the petitioner clearly made an admission that Mahankali Temple is not landlord and the land belongs to the Cantonment Board. Even if it is assumed that the land in S.Nos. 316 and 317/457 are one and the same, in view of clear admission made by the petitioner that the land belongs to Cantonment Board, the orders passed by the Estate Officer and confirmed by the appellate authority are justified and no interference is called for.

6. The writ petition is devoid of merits and it is accordingly dismissed with costs assessed at Rs. 2,000/- (Rupees two thousand only).