

(2004) 11 AP CK 0052

In the Andhra Pradesh High Court

Case No : Second Appeal No. 532 of 2001, Civil Revision Petition No's. 1485 and 1486 of 2001 and 4493 and 4496 of 2003

Smt. Ahmedunnisa Begum (died) per LRs.

APPELLANT

Vs

Smt. Zubeda Khatoon and Another

RESPONDENT

Date of Decision : 01-11-2004

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 20, 26, 32(B)
Evidence Act, 1872 — Section 13
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20(1)

Citation : (2005) 3 ALD 66 : (2005) 2 ALT 494

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : C.R. Pratap Reddy, for the Appellant; S. Balchand, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Aggrieved of the judgment and decree dated 25.4.2001 passed in AS No. 106 of 1995 by the learned III Member, Tribunal for Disciplinary Proceedings-cum-VIII Addl. Chief Judge, City Civil Court, Hyderabad, dismissing the appeal and confirming the judgment and decree dated 7.3.1995 passed in OS. No. 453 of 1987 by the learned VI Asst. Judge, City Civil Court, Hyderabad, the unsuccessful defendants, all through, filed this Second Appeal; whereas, CRP No. 1485 of 2001 was filed by the defendants in the suit aggrieved of the orders dated 28.2.2001 passed in I.A. No. 22 of 2001 in AS No. 106 of 1995 by the learned lower appellate court allowing the petition filed under Order 41 Rule 27 admitting additional evidence subject to proof, relevancy and admissibility. Likewise, CRP No. 1486 of 2001 was filed by the defendants in the suit aggrieved of the orders dated 12.2.2001 passed in I.A. No. 6 of 2001 in AS No. 106 of 1995 by the learned lower appellate court dismissing the petition filed under Order 18 Rule 1 seeking a direction to the plaintiffs in the suit to commence the evidence. CRP No. 4493 of 2003 is filed by the defendants - appellants herein

aggrieved of the orders dated 28.2.2001 passed in I.A. No. 22 of 2001 in AS No. 106 of 1995 by the lower appellate court allowing the petition filed under Order 41 Rule 27 admitting additional evidence subject to proof, relevancy and admissibility while CRP No. 4496 of 2003 was filed by the defendants in the suit aggrieved of the orders dated 12.2.2001 passed in I.A. No. 6 of 2001 in AS No. 106 of 1995 by the learned lower appellate court dismissing the petition filed under Order 18 Rule 1 seeking a direction to the plaintiffs in the suit to commence the evidence.

2. The factual matrix in narrow compass is the plaintiff - respondents herein have filed the suit for eviction of the suit premises bearing No. 15-6-214 and 15-6-215/9, Begum Bazar, Hyderabad and for recovery of rents of Rs.8,400/- and damages of Rs.1,800/- and for mesne profits of Rs.2,000/- per month from the date of suit till recovery of possession, contending that they let out the premises to the first defendant on a monthly rent of Rs.600/-, who died on 22.11.1992 and the defendants 2 to 8 were brought on record as his legal heirs. The first defendant was not regular in paying the rents and committed default from 1.7.1985 to 25.8.1986 and the plaintiffs got issued legal notice dated 18.6.1986 terminating the tenancy. But the defendants, having received the notice on 20.6.1986, did not vacate the premises. It is further case of the plaintiffs that though the premises were let out for running kirana shop, the first defendant diversified his business in other fields i.e. M/s. Afzal Transport Company, Atlas Transport Company and Atlas Tea Company, etc. and thus violated the terms of agreement. Therefore, the suit was filed.

3. The allegation of the plaintiffs that the first defendant committed default in payment of rents is denied and it is asserted that he was very regular in paying rents. It is also pleaded that the civil court has no jurisdiction to entertain the suit, as the monthly rent is only Rs.600/- the Rent Controller is competent to try the same.

4. On these rival pleadings, the trial court framed as many as nine issues. On behalf of the plaintiffs, the 2nd plaintiff is examined as PW-1 and Exs. A-1 to A-12 were marked. On behalf of the defendants, DWs 1 and 2 were examined and no document is exhibited.

5. The trial court, on appraisal of both oral and documentary evidence, observed that the plaintiffs have established their rights over the suit schedule property and disbelieved the version of the defendants and held that the plaintiffs are entitled for recovery of rents, mesne profits and damages from the defendants and decreed the suit.

6. Aggrieved of the same, the defendants preferred appeal being AS No. 106 of 1995 and the learned lower appellate court by judgment dated 9.12.1998 allowed the appeal and remanded the matter back with a direction to dispose of the suit after receiving the documents from both sides and extending the opportunity to adduce oral and documentary evidence. As against the said

judgment, the plaintiffs preferred CRP No. 1712 of 1999 and CMA No. 1097 of 1999 before this court and this court directed the court below to take evidence as to whether GO Ms. No. 100 GAD dated 16.2.1983 was issued after giving notice to the defendants and to dispose of the appeal after recording evidence on the said aspect within six months, as the suit is pending before the trial court. Thereafter, the lower appellate court took up the case and framed an additional issue as follows:

"...Whether the GO Ms. No. 100 GAD dated 16.2.1983 was issued after giving notice to the tenants of the suit premises or not..."

7. Aggrieved of the same, the present Second Appeal is preferred contending inter alia that the validity of GO Ms. No. 100 depends upon the service of notice on the tenants and the tenants were directed to raise the issue in the suit. It is further submitted that the appellants filed writ petition against the very same respondents challenging the validity of GO Ms. No. 100 and that a learned Single Judge held that the GO is invalid as it was issued without giving notice to the tenants who are in occupation of the building and the same order was confirmed by a Division Bench. When a Review Petition is filed by the landlords, the Division Bench interfered with the matter on the ground that since the suit is pending, by virtue of the order of the learned Single Judge and the judgment of the Division Bench, almost rendered the suit infructuous, hence directed the appellants/defendants to take a plea about the invalidity of the GO regard the non-service of the notices and since the judgment is directed against the plaintiffs and binding on the lower appellate court. It is further contended that the docket of the lower appellate court dated 24.4.2001 shows that the counsel for the plaintiffs took advantage of reporting no evidence though there were two interlocutory applications were allowed and still reporting no evidence means the plaintiffs failed to adduce evidence.

8. The substantial question of law that arises for consideration in this Second Appeal is whether the court below is right in holding that GO Ms. No. 100 GAD dated 16.2.1983 is valid, in view of the fact that the Writ Appeal has held the said G.O. is held to be illegal apart from the fact that the additional issue framed in the appeal, judgment of which is impugned herein, is decided against the appellants.

9. The contention of the learned counsel for the appellants herein is that the suit is not maintainable inasmuch as the Civil Court has no jurisdiction to entertain the suit for adjudication, as the suit building is a century old building and since no notice was issued by the Government to the tenants/appellants before issuing the said G.O., as contemplated under Sec. 26 of the Rent Control Act.

10. Pending suit, the correctness of the issuance of the G.O. by the Government under Sec. 26 of the Act exempting the building of the respondents/plaintiffs, was assailed before this Court filing Writ petition No.21483 of 1995, on the sole ground that while issuing G.O., no notice was issued to the tenants, and

therefore, it amounts to violation of principles of natural justice. It is evident from the record that the learned Single Judge issued notice to the Government and the respondent - landlord, with a view to afford opportunity to substantiate their stand, but there was no assistance either from the Government or from the landlord, the learned Judge ultimately quashed the G.O. on the ground that the principles of natural justice were not complied with before issuing the G.O. In Writ Appeal No.749 of 1996, preferred aggrieved of the said order, it was dismissed confirming the order of the learned Single Judge. Thereafter, when a review petition was filed, a Division Bench of this court after hearing, came to the conclusion that since the suit is pending for consideration, it is for the landlord to prove that notice was issued before passing the impugned G.O. by the Government. When such an issue was raised by the tenants in the suit, as defence in the eviction proceedings and that it is for the trial court to consider and give a finding on the basis of evidence placed before it. Further if, the order passed by the learned Single Judge and the Division Bench is given effect to, it amounts to rendering the suit infructuous. In those circumstances, the parties were directed to raise the issue with regard to the validity of the impugned G.O. Accordingly, both the parties filed interlocutory applications to receive documents on their behalf. Accordingly, the lower appellate court framed an additional issue. The matter underwent several adjournments to lead evidence on behalf of the landlord and the tenants, but they failed to lead evidence and submitted to the court that there is no evidence, therefore, the lower appellate court, adverted to the additional issue, observed that the burden to prove this additional issue lies on both the parties inasmuch as both the parties sought permission to adduce additional evidence. It is further observed that though the parties have filed documents, they fail to substantiate those documents by leading oral evidence and get them marked. That apart, neither of parties have sought to implead Government as a necessary party or summoned any of the Government Official to speak about the notice by the Government to the tenant before issuance of the said G.O. Therefore, the lower appellate court held that since both the parties have failed to discharge their burden, a legal presumption arises that the said GO was issued after issuing notice to the tenants of the suit premises.

11. As can be gathered from the records, the documents filed by the respondents are nothing but copies of the orders passed by the Government and this court. Evidently, pending AS No. 106 of 1995, assailing the correctness of the order of remand, the respondents herein filed AAO 1097 of 1999 and CRP 1712 of 1999 before this court which were disposed of by a common order on 5.9.2000 directing the lower appellate court to take evidence on the issue as to whether the GO Ms. No. 100 General Administration Department Dated 16.2.1983 was issued after giving notice to the tenants of the suit premises or not.

12. To substantiate the case, the appellant filed IA No. 6 of 2001 seeking a direction to the plaintiffs - respondents herein to commence the evidence, which was dismissed by the lower appellate court and in revision, this court directed the lower appellate court to reconsider the matter. Therefore, the lower appellate

court is duty bound to take the evidence of plaintiffs - respondents herein. While the matters were thus pending and the appeal was posted for judgment on 25.4.2001, being final sitting day of the lower appellate court, the appellants herein filed IA No. 97 of 2001 seeking ten days adjournment so as to enable the High Court to dispose of the two Civil Revision Petitions i.e. CRP 1485 of 2001 and 1486 of 2001, which was dismissed by the lower appellate court with the following order:

"...Adjournment petition filed and the same is dismissed. Appellants' counsel not ready. Evidence of the appellants closed. Counsel for the respondents reports no evidence. Hence, respondents side evidence closed. For judgment on merits, call on 25.4.2001..."

13. Be that is so, when once this court has directed the lower appellate court to take evidence on the issue of validity of the said G.O., the landlord ought to have adduced evidence to prove that the notices were served on the tenants and opportunity was given before issuance of the said G.O. by the Government, by examining an Officer from the General Administration Department. The lower appellate court has gone contrary to the above established principle that the evidence shall be first led by the plaintiff - respondents herein. On the other hand, the counsel for the respondents landlord reported no evidence and accordingly, the court closed the respondent side evidence. Therefore, I have no hesitation in holding that the plaintiffs - respondents herein have failed to discharge their burden of proving that the notice was issued to the defendants - appellants before issuance of the said G.O. When once the High Court has satisfied that the said GO was issued without notice to the tenants and directed the lower appellate court to record evidence and when the said judgment is inter partes, it ought to have recorded evidence of the parties instead of drawing legal presumption as to the validity of the said G.O. Therefore, the ratio that emerges from decision *Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah*, relied by the learned counsel for the appellants apply in all fours. In this decision it is held that a judgment not inter partes is admissible in evidence under Sec. 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. It is further held that a previous judgment not inter partes, was admissible in evidence under Sec. 13 of the Evidence Act as a "transaction" in which a right to property was "asserted" and "recognized".

14. The learned counsel for the appellants further places reliance on the judgment of this court in *A.N.Dyes Corporation v. State of Andhra Pradesh* 1981 (2) APLJ 293 wherein it is held that before making any order under Sec. 26 of the Rent Control Act, notice to the occupant of the building i.e. the tenant is necessary. In the present case, as was observed by the Division Bench of this court based on the material available on record, that no notice was issued to the tenant before issuing the said GO and, therefore, the issue as to the validity of the said GO was kept open to be agitated in O.S. In view of these facts, the lower appellate court ought to have taken evidence on this aspect, if necessary

seeking extension of the time from this court, instead of hurriedly disposing of the matter, within the timeframe fixed by this court.

15. On the other hand, the learned counsel for the respondents - plaintiffs submits that in view of the exemption granted by the Government to the building in question, the suit is maintainable. Mr. Balchand, learned counsel for the respondents - plaintiffs submitted that the defendants are the sons of the original tenant and their father is no more as on the date of recording evidence and when the defendants also failed to lead evidence and get the documents marked, the court below is right in drawing legal presumption. Contending so, he relied on a Division Bench judgment of this court in Iqbal Singh v. State of A.P. and others 1971 2 ALT 255 wherein it is held that when the exemption, as contemplated under Sec. 26, is intended to be only an exemption from the operation and application of all or any of the provisions of the Act, matters relevant under the provisions of the Act from which exemption is sought for are not germane or relevant while granting exemption from all or any of the provisions of the Act. The section itself provides for the exemption of any building or class of buildings from all or any of the provisions of the Act.

16. The learned counsel for the respondents herein relied on a decision of a learned Single Judge of this court reported in Saranga Krishna Murthy Vs. Govt. of A.P., G.A.D. and Another, ; wherein the validity of the same GO was assailed on the ground that the petitioner therein was not given an opportunity before granting exemption in respect of the building and, therefore, it is violative of Article 14 of the Constitution of India. The learned Single Judge, adverted to the decision rendered by the Supreme Court in Motor General Traders Vs. State of Andhra Pradesh (AIR 1984 SC 121) has held that the State Government issued GO Ms. No. 636 dated 29.12.1983 exempting new buildings for a period of ten years from the date of construction. My learned Brother also relying on a decision of Apex Court in Mohinder Kumar and Others Vs. State of Haryana and Another, wherein it is held that exemption of houses for ten years from the provisions of the Act is not arbitrary and not violative of Article 14 of the Constitution and reading GO Ms. No. 100 General Administration Department Dated 16.2.1983 along with GO Ms. No. 636 Dated 29.12.1983, held that the impugned GO is valid for a period of ten years from 16.2.1983.

17. Reliance is also sought to be placed by the learned counsel for the respondents on yet another judgment of this court in WP No. 96 of 1989 and 7607 of 1990, wherein a learned Single Judge of this court following the judgment in Saranga Krishna Murthy's case, held that there is no infirmity in the issuance of GO Ms. No. 100 General Administration Department dated 16.2.1983, but held that the benefit shall be operative only for a period of ten years from the date of the said G.O.

18. The learned counsel for the respondents further placed reliance on a judgment of this court in CCCA No. 126 of 1995, which was filed by the unsuccessful plaintiffs in OS No. 672 of 1986 on the file of the IV Additional

Judge, City Civil Court, Hyderabad, for eviction of the respondent and for recovery of arrears of rent, etc. It was contented therein that all the buildings constructed after 26.8.1957 were exempted from the operation of the provisions of the Act and once Sec. 32(B) of the Act was struck down, all the buildings come within the purview of the Act and therefore, irrespective of the striking down of Sec. 32(B) of the Act, the power of the Government to grant exemption to any building or class of buildings from all or any of the provisions of the Act, remained intact, and consequently the exemption granted under GO Ms. No. 100 remained ineffective and, therefore, the suit is maintainable. Conceding with this submission of the learned counsel for the appellant therein, the learned Single Judge held that the power of the Government to grant exemption under Sec. 26 of the Act is an independent power, and therefore, GO Ms. 100 dated 16.2.1983 is valid.

19. Reliance is further sought to be placed by the learned counsel for the respondents herein on yet another judgment of this court in CCCA Nos. 109 and 182 of 1999 dated 11.10.2002. CCCA No. 182 of 1999 was filed by one Mr. Abdul Razak, for specific performance of the agreement of sale, dated 28.10.1984, which was dismissed; while CCA No. 109 of 1999 was filed by him aggrieved of the judgment and decree passed against him in OS No. 526 filed by Zubeda Khatoon and sons. The appellant, Mr. Abdul Razak was directed to vacate and deliver the vacant possession of the suit premises within three months, apart from awarding arrears of rent and damages, in favour of Zubeda Begum. The learned Single Judge of this court, having regard to the issues framed in both the suits by the trial court, framed the following points for consideration viz.,

1. Whether the defendants did not execute the agreement of sale dated 28.10.1984 in favour of the plaintiff agreeing to sell the suit schedule premises for a sale consideration of Rs.1,87,000/?
2. Whether the plaintiff is entitled for specific performance of the agreement of sale dated 28.10.1984; and
3. Whether the plaintiff is liable for eviction from the suit premises?

20. The submission of the learned counsel for the appellant therein that when the suit premises was exempted from the provisions of the Rent Control Act by issuance of GO Ms. No. 100, the civil court has no jurisdiction to entertain the suit for eviction and consequently, under the suit agreement, the plaintiff was entitled to continue in possession, was repelled by the learned Single Judge for the reason that the Trial Judge has rejected the issue having regard to the decision in R.K. Gupta v. Sartaj Karan (1989 (1) APLJ 214) wherein it was held that the benefit under the Government Order exempting the building from the provisions of the Rent Control Legislation for a period of ten years will continue to be available until the suit is disposed of or adjudicated finally. The learned Single Judge also observed that no plea was taken nor raised to the effect that E. B-6 is invalid for non-issuance of notice to the tenant. The learned Single Judge

without framing a point with regard to the validity of the G.O. for consideration, relying on a Division Bench judgment of this court in *India Cable Co. Ltd. Vs. The Government of Andhra Pradesh and Others*, , which arose under the Urban Land Ceiling Act, wherein it is held thus:

"...in the instant case, as already held, the rights of the petitioner as a tenant are not in any way affected. Equally, the contention that the petitioner has a reasonable expectation of getting the land allotted and therefore, he is a person aggrieved, also is devoid of force. That way, there maybe many members of public reasonably expecting the allotment by the Government after the excess land is taken over, but that does not mean that the Government should go on giving notices to all the members of the public and hear them at the time of disposing of an application for exemption. Practical considerations also sometimes do exclude a right to hearingAs already mentioned, it is the nature of the decision that matters and a grant of exemption under Sec. 20 of the Act does not in any way affect the rights of the petitioner who claims to be a tenant. Nor such an exemption can be equated to final determination of the rights of the parties. For all these reasons, we are not able to agree with the learned counsel for the petitioner that there is violation of the principles of natural justice..."

in view of the above judgment of the Division Bench, my learned Brother V.V.S.Rao, J., held that when the building which is in occupation of the tenant is exempted and such benefit is given to a landlord, a tenant need not be heard and, therefore, held that the defendants who filed the suit for eviction are entitled to claim amount towards damages for use and occupation. The learned counsel for the respondents herein further submits that the Special Leave Petitions (C) Nos. 16081 and 16424 of 2003 preferred against the judgment and order dated 11.10.2002 in CCCA No. 109 by Mr. Abdul Razack were also dismissed. From a reading of the above judgment of the Division Bench, it is clear that when exemption granted to the landlord was questioned by the tenant, the Division Bench rejected the same on the ground that the tenant is not effected in any way and also rejected the contention that the tenant therein has reasonable expectation to get the land allotted. Therefore, he is not a person aggrieved, and therefore, the said contention is devoid of merit. Further the Rent Control Act held to be a piece of beneficial legislation which was enacted to protect the tenant from the clutches of the landlord. Whereas, in the present case, by virtue of the exemption granted by the Government under Sec. 26 of the Rent Control Act, jurisdiction of the forum is changed and the rights accrued to the tenants under the provisions of the Act are very much effected, which culminate in great prejudice to the defendants/ tenants. That apart, the rights accrued to the tenants under the provisions of Urban Land Ceiling Act and the Rent Control Act cannot be equated. Therefore, the above finding of the learned Single Judge is contrary to the above two Division Bench Judgments of this court, referred to supra.

21. Banking upon the judgments of this court referred to above and the findings of the trial court, it is contended by the learned counsel for the respondents that the impugned G.O. had to be held valid reading with GO Ms. No. 636 dated 29.12.1983 and, therefore, the suit is maintainable and the trial court has jurisdiction. It is further contended that though ample opportunity was given by the lower appellate court, the appellant has not chosen to avail the same and produce witnesses to record the evidence and in such an event the question of producing witnesses by the respondents herein does not arise to prove the validity of the GO.

22. A Division Bench of this court, way back in 1971 itself, in Iqbal Singh's case, observed that when the exemption as contemplated under Sec. 26 is intended to be only an exemption from the operation and application of all or any of the provisions of the Act, matters relevant under the provisions of the Act from which exemption is sought for are not germane or relevant while granting exemption from all or any of the provisions of the Act. That was a case wherein the respondents therein filed an application before the Government under Sec. 26 of the Act and the Government caused the issuance of notice to the appellant therein to submit his representation and on such submission, the Government after duly considering his representation, passed the GO in question. Thus, the principles of natural justice were complied with notwithstanding the fact that it is found as a statutory pre requisite for issuance of the GO in question under Sec. 26. Thus the Division Bench, in unequivocal terms has held that causing notice before issuance of the G.O. is a statutory pre requisite. This statutory requirement is not met in the instant case.

23. The contention of the learned counsel for the respondents is that having regard to the ratio laid down by the Apex Court in Motor General Traders case, the impugned GO has to be held valid when it is read in juxtaposition to GO Ms. No. 636 dated 29.12.1983. In Motor General Traders case, the court did not advert to the aspect whether the principles of natural justice were met or not before issuing the GO. Therefore, I am afraid, the ratio laid down therein can be equated with the contentions raised herein.

24. Coming to the findings of the learned Single Judge of this court in CCCA No. 109 and 182 of 1999, that when there was no plea raised or foundation laid in respect of the issuance of notice before issuing impugned G.O., before the trial court, a finding as to its validity ought not to have been recorded by the learned Single Judge affirming the findings of the Trial Court. With respect, I am in disagreement with the said finding for more than one reason. The State Government by G.O. Ms. No. 4778 Revenue (UC - II) Department dated 11.11.1980, exercising its power under Sec. 20(1) of the Urban land (Ceiling and Regulation) Act (33 of 1976), exempted an excess vacant land measuring 4776.84 Sq. Mts., and the petitioner company was a tenant in the said premises. The owners sold the entire premises to the respondent who obtained the exemption, which was challenged by the petitioner - tenant and the court held

that though the petitioner - tenant's legal rights as such are not affected by the exemption order, yet it can maintain the writ petition as a person interested. The Bench was dealing the matter under Urban Land (Ceiling and Regulation) Act and exemption of excess vacant land by the issuance of impugned G.O. and the petitioner's locus standie therein to challenge the same. That apart, when the GO Ms. No. 324 dated 12.4.1967, granting exemption under Sec. 26 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, came to be challenged, a Division Bench of this court in Iqbal Singh's case, has held the GO to be valid, inasmuch as it was passed after causing notice to the tenant and after considering the representation filed by the tenant.

25. At the cost of repetition, it has to be observed that in Review WAMP (SR) No. 85344 of 1996, while setting aside the orders passed in Writ Appeal No. 421 and 423 of 1995 and WP No. 96 of 1989 and 7607 of 1990, has ordered the petitioner therein to raise the disputes as to the validity of the G.O., on the ground of want of notice. The order passed in this Review Petition has become final. Further, a learned Single Judge of this court in CMA No. 1097 of 1999 dated 5.9.2000, directed the lower appellate court to record evidence and dispose of the matter as it was pending before the trial court. When the learned Judge directed the parties to raise the dispute as to the validity of the GO and as directed by the Division Bench the defendants - appellants raised the issue, therefore, the burden lies on the plaintiffs to prove by cogent evidence, particularly by examining any Officer from the Government to prove that the notice was issued in compliance of principles of natural justice, before issuing the impugned G.O. Once the plaintiffs - respondents submitted that there is no evidence, they failed to prove the issuance of notice to the appellants - defendants and, therefore, an adverse inference should have been drawn against the plaintiffs instead of drawing a legal presumption against the defendants - appellants. Therefore, having regard to the ratio laid down in Iqbal Singh's case and K.M. Krishnaiah's case, I hold that the judgment and decree holding the impugned GO as valid is liable to be set aside, being violative of principles of natural justice. Accordingly, the impugned GO is held invalid and consequently, the Second Appeal is allowed and the suit is dismissed being not maintainable.

26. Consequent upon allowing the Second Appeal, all the C.R.Ps. stand disposed of. No order as to costs in the matters.