

\204?
SLP(C)No. 2203 OF 2000

ITEM No.202

Court No. 4

SECTION IVA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.2203/2000
(From the judgement and order dated 30/11/1999 in CP 870/99
of The HIGH COURT OF KARNATAKA AT BANGALORE)

H. NANJUNDAIAH

Petitioner (s)

VERSUS

ASWATHNARAYANA RAO AND ANR.
(With prayer for interim relief)
(For Final Disposal)
With

Respondent (s)

SLP(C)No.3637/2000
(With prayer for interim relief and office report)
(For Final Disposal)

Date : 05/04/2002 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s) Mr. M Rama Jois, Sr. Adv.
Mr. S.N. Bhat, Adv.
Mr. N P S Panwar, Adv.
Mr. D P Chaturvedi, Adv.

For Respondent (s) Mr. N. Ganpathy, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

Heard learned counsel for the parties for
about 10 minutes.

Leave granted.

The appeals are allowed in part. There shall,
however, be no order as to costs.

.SP1

(S. Krishnan)
Court Master

(Kanchan Jain)
AR-cum-PS

Signed order is placed on the file.

.PA

.....L.....I.....T.....T.....T.....T.....T.....J

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2475 of 2002@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
arising out of
SPECIAL LEAVE PETITION (C) NO. 2203 OF 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

H. NanjundaiahAppellant

VS.

Aswathnarayana Rao & Anr.Respondents

With C.A. No. 2476 of 2002
arising out of
SLP(C) No. 3637 of 2000

O R D E R@@
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

Civil Appeal No. 2476/2002@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCC

Leave granted.

Heard learned counsel for the parties.

The appellant herein, while working as Technical Officer in the Directorate of Health and Family Planning Services, Bangalore, was allotted Government Quarter bearing No. C-9, Jayamahall Extension, Bangalore. In the year 1984, the Government decided to construct first floor on the building occupied by the appellant. Aggrieved thereby, the appellant filed a suit for permanent injunction restraining the respondents-herein from constructing first floor. The said suit was dismissed. Regular First Appeal, filed by the appellant, was also dismissed by the High Court. The High Court, while dismissing the RFA, passed the following order:

.....L.....I.....T.....T.....T.....J.....
.SP1

2.

"I therefore direct the Government to put up the first floor construction forthwith if it is not done already and recover the difference in cost thereof from the plaintiff from his salary or from any other money payable by him by the Government and such deduction shall start as and from January 1999. It is significant to point out that nearly 14 years as on date, the plaintiff has successfully prevented the Government

from putting up the construction by abuse of process of Court. It is open to the Government to calculate the approximate cost and approximate loss or the difference in cost of construction and recover the same in instalments from the plaintiff taking into consideration the total number of years of service with the Government."

.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

In addition to that, the appellant was directed to pay costs of Rs. 5,000/-. Aggrieved, the appellant is in appeal before us by way of special leave petitions.

Mr. Rama Jois, learned Senior counsel appearing on behalf of the appellant urged that the appellant could not have been placed at a worse position than when he was before the trial court and, therefore, the order of the High Court, to the extent it directed the recovery of compensation from his salary, be set aside. Mr. N. Ganpathi, learned counsel appearing for the respondent does not dispute the said legal propositions. We, therefore, set aside the direction, issued by the High Court by order dated 4th December, 1998 that the approximate loss or the difference in cost of construction shall be recovered from the salary of the appellant-herein. Rest of the decree as affirmed by the High Court is upheld.

We are informed at the Bar that the appellant has since retired. In that view of the matter, the appellant shall vacate the premises by 31st May, 2002 provided he files a usual undertaking in this Court within four weeks from today. In case the undertaking is not filed, this part of the order shall stand vacated and it will be open to the Government to evict the appellant from the premises in dispute.

Accordingly, the appeal is allowed in part. There shall, however, be no order as to costs.

Civil Appeal No. 2475/2002@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
Leave granted.

In view of the fact that appellant has deposited the cost, we are not inclined to interfere with the matter. The appeal is accordingly dismissed. No order as to costs.

.SP1

.....J.
(V.N. KHARE)

.....J.
(ASHOK BHAN)

New Delhi
April 05, 2002.