

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.31717 of 2012

ORDER:

- This writ petition is filed stating that the petitioners were allotted shops Nos 33 to 35 of Anandapur Town, Anathapur District in pursuance to public auction held on 12-11-2011 by 2nd respondent and the lease period was for three years commencing from 15-11-2011 to 14-11-2014 and the rent fixed was Rs.4,500/- and good will amount is Rs.1,85,000/-. Earlier when the shopping complex was constructed, shops were allotted to successful bidders. But the shops in ground floor were not handed over to the successful bidders because of dispute with Indian Oil Corporation which was in front of shopping complex and because there is no access to the shops. Aggrieved by the in action of respondent, bidders of shop Nos.30, 31, 32 filed W.P.No.6446 of 2004, this Court directed to consider their representation. Thereafter, council meeting was held on 29-07-2004 by a resolution NO.818 and it was resolved to reduce the rent to Rs.2250/- as well as good will amount to Rs.92,500/- till the dispute is resolved with the petrol bunk. The petitioners made representations on 11-04-2012 and 29-07-2012 to the 2nd respondent to accept the rents as per their resolution No.818 to their shops also. But the said representations were rejected on the ground that road laying was going on. Hence, they could not give concession. Aggrieved by the same, the present writ petition is filed with a prayer that same benefit extended to the petitioners as that of shop Nos. 30 to 32.

Counter affidavit is filed on behalf of the 2nd respondent. It is stated that the conditions laid down in resolution No.818 dated 29-07-2004 duly fixing of the half of the good will amount of Rs.92,500/- and half of the rent of Rs.2250/- is only till the dispute with petrol is bunk resolved. But now the road was laid and thus provided access to the petitioners' shops. As such, it can be said that the said resolution would not stand now. It is further stated that the representation made by the petitioner dated 11-04-2012 was rejected on the grounds as stated in the endorsement No.1050/2012/A-1, dated 05-06-2012. As per the proceedings vide Rc.No.238/2010/-, dated 02-12-2011 with terms and conditions duly fixing rent at Rs.4500/- with five months as an advance is reasonable, as now there is no obstruction for the petitioner shops and provided access road to them.

Reply is filed disputing the averments in the counter affidavit.

Learned counsel for the petitioners submits that still there is no access to the shops of the petitioners. As such, they are also entitled to the benefit on par with the other shop owners referred supra.

On the other hand, Sri S.D.Goud, learned Standing Counsel for respondents submits that now road is laid and the petitioners have access to the shops. As such, the question of reduction does not arise.

The petitioners are allotted shops in pursuance to the auction conducted and now the

petitioners should abide by the terms and conditions of the allotment. Though, it is stated in the petition that they do not have access to the shops, the same is disputed by the respondent-Corporation saying that road is laid. When the said fact is disputed, said disputed question of fact cannot be decided by this Court by exercising the power under Article 226 of Constitution of India. More so, the allotment of the shops on lease basis and they are covered by lease deed executed between the petitioners and the respondent-Corporation. In view of the averments mentioned in the counter by the respondent-Corporation, this Court cannot issue Mandamus for reducing the rents and I do not see any merits and the writ petition is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY,J

25-08-2015
Nvl

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.17618 of 2014

Date: 02.07.2014

Nvl