

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.15614 of 2015

Dated : 05.06.2015

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Between:

Md. Khaleemuddin S/o.Late Pasha,
Aged about 28 yrs, R/o.Kodada Village and Mandal,
Nalgonda District & 39 others

.. Petitioners

And

The State of Telangana,
Rep., by Principal Secretary,
Municipal Administration and Urban Development,
Secretariat, Hyderabad & another

.. Respondents

This Court made the following :

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ORDER :

The petitioners claim to be the vegetable vendors carrying out the said avocation for the last 30 years in Kodad. Kodad was a Gram Panchayat up to 15.09.2011 and from 15.09.2011 it became Municipality. Before the Gram Panchayat became Municipality, by resolution dated 13.10.2010, the Gram Panchayat extended the lease to the petitioners for a further period of five years and the lease could expire in October 2015. While so, the Municipality has issued tender notification on 30.05.2015 to conduct fresh auction to allocate space for carrying on vegetable vending. The said notification is under challenge.

2. Learned counsel for the petitioner contends that in view of the resolution passed by the Gram Panchayat on 13.10.2010 extending the lease to the petitioners for a period of five years, the petitioners are entitled to carry on their avocation till October 2015 and until the lease period expires, the respondent-Municipality cannot go for fresh awarding of contract calling for fresh applications and therefore, the said action is *ex-facie* illegal.

3. Learned counsel submits that in view of the provisions contained in Section 246 of A.P. Panchayat Raj Act, 1994, the power to cancel the resolution passed by the Gram Panchayat vests in the Government and unless and until such power is exercised, all such resolutions validly made by the Gram Panchayat shall be in force and therefore, the respondent-Municipality erred in calling for fresh tenders. In support of the said contention, learned counsel placed reliance on a decision of the Division Bench reported in ***Eguvakamma Kandriga Gram Panchayat, S.R. Puram Mandal, Chittoor District Vs District Collector, Chittoor and others***. She further submits that no notice or opportunity was afforded to the petitioners before taking such course of action and on that ground also, the tender notification gets vitiated.

4. Learned Standing Counsel submits that in view of establishment of the 2nd respondent-Municipality, the earlier resolutions have no legal validity. Awarding of contracts/leases are governed by Rules notified by the Government under G.O.Ms.No.686 Municipal Administration dated 30.07.1968 as amended in G.O.Ms.No.56 dated 05.02.2011. As per the amended Rules no person can be granted lease beyond 25 years and admittedly, all the petitioners have completed more than 30 years of lease and therefore they have no manner of right to seek continuation and thus there is no illegality or irregularity in issuing fresh notification calling for applications for granting lease.

5. The only basis for the petitioners to contend that the tender notification is not valid is on the ground that the Gram Panchayat has passed resolution extending the lease till October 2015 and therefore, unless the lease period expires, the question of awarding fresh lease does not arise.

6. In the normal circumstances, lease validly granted by way of resolution by the Gram Panchayat has to be in force. Unless by way of legal consequences or for valid reasons, the lease cannot be terminated. In the instant case in fact no lease is

also terminated. However, the Gram Panchayat became the Municipality on 15.09.2011. All municipalities are governed by the Municipalities Act, 1965 and the Rules made there under. The Rules notified in exercise of power vested in the State, prescribe that ordinarily lease should be granted for a period of three years. Power is vested in the Municipal Council to extend the lease for another period of three years. Beyond the next period of three years lease can be extended only after obtaining prior sanction of the Government. However an outer limit of 25 years is prescribed.

7. Whether lease can be granted beyond 25 years fallen for consideration before the Division Bench of this Court in W.P.No.6354 of 2009. It was contended that the power vested with the Municipality is to renew the lease from time to time. But such renewal shall not be for 25 years and that there was no outer limit of 25 years. This contention was rejected by the Division Bench and held as under :

“It is a trite principle under a constitutional order that all public properties are public assets administered by State actors or instrumentalities in a fiduciary capacity and enjoined to be administered in conformity with fiduciary principles. All discretion conferred on public authorities is a public trust and consecrated for the purpose of its employment in public interest. Certain executive choices may involve balancing of a plurality of public interest choices but whereas in the present case the property of a public authority-the Nalgonda Municipality is intended to be leased out, the sole and exclusive public policy choice is for ensuring the augmentation of the revenues of the Municipality”.

8. The Division Bench, therefore held that no renewal of lease is permitted even with the sanction of Government for a period beyond 25 years without conducting public auction. It was also held that the phraseology of the second proviso is not ambiguous and in any event the statutory rule must be read consistent with public interest concerns. It was also held as under :

“In the considered view of this Court constitutional and public law concerns as well as the provisions of the 1967 and 1968 Rules do not enable further renewal of the lease in favour of the 6th respondent nor enable the official respondent Nos.1 to 4 to avoid the transparent public process of granting lease of the schedule property only by public auction”.

9. In the instant case though there is no fresh renewal granted, but the claim to continue with the lease and to set aside auction notice is based only on the resolution passed by the Gram Panchayat, when it was a Gram Panchayat prior to

15.09.2011. As noted above, after 15.09.2011 Kodad is a Municipality and is governed by the Municipalities Act and the Rules made there under. When the Rules clearly mandate maximum limit of 25 years for granting of lease and petitioners having completed 25 years of lease, the petitioners have no manner of right to seek for continuation of lease for further period. In the said view of the matter, I do not see any error in issuance of fresh tender notification. It is neither illegal nor arbitrary exercise of power. Many persons are intending to carry on the same avocation as petitioners were doing. Even the petitioners have due opportunity of participating in the auction and if they are successful they are entitled to carry on the same avocation. Conducting of auction to grant lease is to provide opportunity to all intended vendors and to secure better lease price to the Municipality. Such a course sub serves public interest. On the ground that some resolution was passed by the Gram Panchayat, the Municipality cannot be deprived of their entitlement to collect appropriate lease amount for carrying on said avocation. The said amount is for public purpose and continuation of the individuals on the ground of resolution passed five years ago by Gram Panchayat deprives the Municipality the due amounts in accordance with law and is not in public interest. Hence, I see no merit in the writ petition.

10. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

P.NAVEEN RAO,J

5th June, 2015

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