

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.22566 of 2011

ORDER:

The writ petition is filed seeking the following relief/s:

'..to issue an appropriate writ or order or direction more particularly one in the nature of writ of mandamus, declaring the action of the 3rd and 4th respondents in allotting the shops in the new shopping complex constructed at Aluru bus station, Aluru, Kurnool District to the respondents 5 to 11 and not allotting to the writ petitioners as per the resolution dated 10-11-2008 as illegal, arbitrary and violation of principles of natural justice and consequently direct the respondents 3 and 4 to reallocate the shops allotted to the respondents 5 to 11 by evicting them and pass such other order

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the petitioners, the learned Government Pleader for Panchayat Raj appearing for the respondents 1 and 2, the learned counsel for the 3rd respondent and the learned counsel for the 8th respondent. I have perused the material record.

3. The case of the writ petitioners, in brief, is this:

The writ petitioners are residents of Aluru. Since several years, they are eking out their livelihood by doing petty businesses by establishing shops at their own cost near Aluru bus stand. They were also paying rentals for the said shops established by them to the 3rd respondent. Under the leadership of the Sarpanch a general body meeting was held on 10.11.2008; and all the members including the shop keepers who are eking out livelihood by establishing shops near Aluru bus stand were requested to attend the said meeting. At that meeting a resolution was passed to the following effect: "That shops would be constructed after incurring an expenditure of Rs.36.00 lakhs provided from out

of the MLA constituency fund; the persons already having shops have to deliver possession of the shops in their respective possessions to the Gram Panchayat to make available the land for the construction of such a shopping complex at the Bus Stand; after the completion of the construction of the shopping complex, the persons who had earlier surrendered the shops and who were having shops for the last 30 years are required to seek the Gram Panchayat to allot rooms to them after paying the encroachment fee to the Gram Panchayat; a decision would then be taken as regards the deposit to be made and the rents payable for the rooms to be allotted to the eligible persons, who would agree for the rates decided by the Gram Panchayat.” While so, the 3rd and 4th respondents by collecting amounts had allotted shops in the complex to some persons who did not have any shops earlier at the bus stand. The allotment of shops to the respondents 5 to 11 by the respondents 3 and 4 is illegal and is contrary to the resolution dated 10.11.2008. Due to the actions of the said respondents 3 and 4, the petitioners are deprived of their right to allotment of shops and the said action of the respondents is contrary to the principles of natural justice. Some persons similarly placed as the writ petitioners and who were also not allotted shops had approached this Court and filed writ petitions and the said writ petitions were disposed of with directions to allot shops as per the resolution dated 10.11.2008. The respondents 3 and 4 did not implement the orders of this Court in the said writ petitions till date. The names of the present writ petitioners are included in the resolution at serial numbers 19, 13 and 21 respectively. On 12.05.2009, the 3rd respondent had passed a resolution that the Gram Panchayat shall allot 28 rooms to the persons, who had lost the shops while making available the land for construction of shopping complex, and that the other vendors also would be allotted shops after constructing further shops. After constructing the shopping complex, no steps were taken to allot the shops to the petitioners as well as several others who are similarly placed. The writ petitioners are prepared to comply with the conditions in regard to the deposit and the payment of rent for allotment of new shops to them. Though a grant for Rs.36.00 Lakhs was received, the 3rd respondent is, however, demanding more money for the purpose of providing electricity connection and for laying floor. Further, the respondents 3 and 4 had started making demands for payment of Rs.30,000/- without receipts. The petitioners being poor people are not able to comply with

the demands of the respondents 3 and 4. The respondents 3 and 4 are bound to allot shops to the writ petitioners in the new shopping complex. The petitioners are not able to secure recommendations for allotment of shops to them in the new shopping complex. Deserving persons who have lost their livelihood by surrendering their old shops are not allotted shops in the new shopping complex due to the arbitrary and illegal actions of the respondents 3 and 4, which are in violation of the principles of natural justice.

4. The 3rd respondent filed a counter affidavit resisting the writ petition and denying the material averments in the writ petition. It is *inter alia* urged in the counter affidavit as follows: - 'The Gram Panchayat had constructed, from out of the MLA funds, the commercial complex with 40 rooms in the premises of the old Bus stand occupied by the petty business people of Alur. This respondent had caused a notice dated 19.06.2008 in Rc.No.29/08 to vacate the premises so as to enable this respondent to regularise the leases of the said shops. Aggrieved thereby the writ petitioners herein along with some others have filed WP.No.14397 of 2008 before this Court seeking direction not to evict them without considering their representation for allotment of shops to them. Keeping in view, the directions of the Court and the livelihood of the family members of the petty vendors and to provide shops in the commercial complex on humanitarian grounds, the issue was placed before the Gram Panchayat for allotment of the shops to the vendors. After discussions in the Gram Panchayat meeting held on 10.11.2008, the Gram Panchayat had decided to allot rooms to the vendors with the pre condition to remit rent amount of Rs.610/- per month and to remit 3 years rents towards advance to the Gram Panchayat. Agreeing to the said condition 40 members out of 76 members have remitted the necessary amount as fixed by the Gram Panchayat and had occupied the rooms duly following the resolutions. As the remaining 36 persons, including the writ petitioners herein, have not come forward to remit the amount, they are not allotted rooms. If the petitioners are willing to pay the rents as stipulated by the Gram Panchayat on par with the other tenants they will be allotted the rooms. The 2nd writ petitioner is not doing any business. Hence, he is not entitled to any allotment of shop in his favour. The writ petition filed earlier was disposed of with a direction to consider the request upon payments as stipulated by the Gram Panchayat. However, after the disposal of the said writ

petition, the petitioners 1 and 3 herein had neither approached this respondent for allotment of shops nor offered to pay any amounts to the Gram Panchayat. Hence no allotments could be made to them. The Gram Panchayat is considering the requests of the vendors on humanitarian grounds. Though the capacity of the shopping complex is 40 rooms, seven vendors were only accommodated by partitioning the rooms. Even after allotments, some of the allottees had not occupied the allotted rooms and are conducting their businesses on roads causing much inconvenience to the public. When such allottees are being asked to occupy the rooms allotted to them, the writ petition is filed on untenable grounds. There is no merit in the contentions of the writ petitioners that the rooms were allotted to the others in the circumstances stated by them. The writ petition may be dismissed.'

5. The learned counsel for the parties made submissions in line with the respective pleadings. Keeping apart the contentions and rival contentions, which are besides the point involved in matter, it is apt to note that it is not in dispute that prior to the construction of the shopping complex, the writ petitioners used to carry on their petty businesses in small shops in the bus stand. However, as per the defence, the 2nd petitioner is not carrying on any business at present. The petitioners had also participated in the meeting dated 10.12.2008 at which the resolution was passed is not being disputed. The Gram Panchayat had already decided to allot shop rooms to the vendors on pre condition that the allottees of the shops shall pay a rent of Rs.610/- per month besides depositing 3 years rent towards advance deposit with the Gram Panchayat. In the counter affidavit of the 3rd respondent, it is stated that out of 76 members, who are eligible, only 40 members have remitted the necessary amounts as fixed by the Gram Panchayat and that they had alone occupied the rooms as per the resolutions and that the remaining 36 persons, including the petitioners, have not come forward to remit the deposit amounts and have not expressed preparedness to comply with the pre conditions fixed by the Gram Panchayat and that as such they were not allotted any shop rooms. As also stated in the counter affidavit, the respondents 3 and 4 are willing to allot rooms to the writ petitioners provided the writ petitioners are willing to make the deposits and pay rents as stipulated by the Gram Panchayat and on par with the other occupants of the shops, who are similarly placed.

6. In the facts and circumstances and in the light of the submissions made, it would be just and fair to direct the writ petitioners to approach the Gram Panchayat and submit written applications/representations expressing their willingness to occupy the shops on allotment to them on deposit of the advance and payment of rents as stipulated by the Gram Panchayat and on par with the others who are similarly placed and who were already allotted shop rooms.

7. In the result, the Writ Petition is allowed in part. The writ petitioners are directed accordingly to approach the 3rd respondent-Gram Panchayat, Aluru and submit written applications/representations within 4 weeks from the date of the receipt of a copy of this order making a request to allot shops to them and expressing their willingness to occupy the shops on allotment to them on deposit of advance and payment of rents as stipulated by the Gram Panchayat and on par with the others who are similarly placed and who were already allotted the shop rooms. On receiving such representations from the petitioners, the respondents 3 and 4 shall process the same within three weeks thereafter and intimate in writing the willingness to allot shop rooms which are vacant to such of the petitioners, who made such representations, and then allot suitable vacant shops to them after giving them reasonable and sufficient time to comply with the similar pre-conditions that are already complied with by the others who are similarly placed and who are carrying on businesses in the shop rooms already allotted to them in the complex. No costs.

Miscellaneous petitions, pending if any, in the writ petition shall stand closed.

M. SEETHARAMA MURTI, J

03.12.2015

Vjl