

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.22274 of 2012

ORDER:

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief/s:

'...To issue a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the respondent in issuing paper notification No.395/2012, dated 13.07.2012 demanding the petitioners to pay the arrears of rents by applying the principle of 33 1/3% retrospectively as illegal, arbitrary and without jurisdiction and set aside the same and pass such other order or orders..'

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioners and the learned Standing Counsel appearing for the respondent Municipality. I have perused the material record.

3. The petitioners admittedly have come into possession of the respective shops of the respondent Municipality as lessees on payment of rents and are continuing in possession of respective shops and are running their respective businesses. While so, the respondent Municipality had issued the notices dated 15.12.2011 to all the petitioners requiring them to pay rents at the enhanced rates i.e., at the rate of 33 1/3% above the earlier rent and the arrears within seven days from the date of the receipt of the said notices and enter into registered agreements of lease. The respondent Municipality had further issued the paper notification dated 13.07.2012 notifying the shops in the occupations of the petitioners for public auction. Feeling aggrieved of the said actions of the respondent Municipality the writ petition is filed. The respondent-Municipality had filed a detailed counter resisting the writ petition.

4. At the time of hearing, the learned counsel for the petitioners would submit that the petitioners are obligated and prepared to comply with the terms of GO Ms.No.56, dated 05.02.2011 of the Municipal Administration And

Urban Development (JI) Department and pay the rents at the enhanced rates i.e., @ 33 1/3% above the earlier rent from the date of the said GO only but, not prior to the date of the said GO and that the petitioners are not obliged and are not prepared to pay the enhanced rents at 33 1/3% above the earlier rents as claimed in the statements enclosed to the notices dated 15.12.2011 and that the petitioners are also assailing the auction notice no.395/2012 dated 13.07.2012 issued by the respondent as illegal, arbitrary and contrary to the Rules.

5. In the counter affidavit filed, the respondent having adverted to the terms of the aforementioned GO had urged that the parties are bound by the terms of the GO and that if the petitioners are not prepared to agree to comply with the terms of the GO and are not agreeable for the renewal of the leases, the respondent Municipality is entitled to notify the shops in the occupations of the petitioners for conducting public auction in accordance with procedure established by law.

6. As the petitioners are now not prepared to abide by the terms of the said GO and are not agreeable for the renewal of the leases, as rightly submitted by the learned counsel for both the sides, the only course left open is to allow the respondent Municipality to issue a fresh notification, if it so desires, and to proceed to conduct a public auction in respect of the subject shops in the occupations of the petitioners, however, in strict accordance with the procedure established by law. It is needless to mention that the petitioners would be entitled to participate in such auction to be held, if they so desire and if so advised. It is also necessary to note that since the petitioners are agreeable to abide by the terms of the GO insofar as the enhancement of rents, from the date of the GO, they shall pay the arrears of rents from the date of the GO as per the terms of the GO.

7. Having regard to the facts and the submissions, the Writ Petition is disposed of directing the respondent Municipality to issue a fresh notification, if it so desires, and proceed to conduct a public auction of the leasehold rights of the subject shops in strict accordance with the procedure established

by law. It is made clear that the petitioners would also be entitled to participate in the public auction as and when held and that the petitioners are entitled to be in occupation of the respective subject shops only till the lease agreements are entered into with the highest bidders in the public auction, and not thereafter, in case third parties become the successful bidders and not the petitioners. However, in case, if at the public auction to be held, the bids in respect of any shops are found to be less than that obtained in the previous year (i.e., less than the rents determined as per the terms and from the date of the GO and payable by the petitioners herein for the respective shops) and if the petitioners concerned so desire for continuance of the respective leases at the said rates, the authority concerned may, notwithstanding the public auction held, grant leases of the respective shops to them following the *proviso* to Rule 4 of the A.P. Municipalities Receipts and Expenditure Rules, 1968. It is apt to mention that the petitioners are liable to pay the arrears of rent determined at the enhanced rates i.e., @ 33 1/3% above the respective existing rents as per the terms and from the date of the G.O.Ms.No.56, dated 05.02.2011 of the Municipal Administration And Urban Development (JI) Department. No costs.

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

M. SEETHARAMA MURTI, J

10.12.2015

Vjl