

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.7199 OF 2015

ORDER:

This writ petition is filed seeking *Writ of Mandamus* declaring the action of the 1st respondent in issuing the paper notification in “Eenadu” Telugu Daily Newspaper dated 08.03.2015 in East Godavari District Edition, proposing to conduct auction from 23.03.2015 to 25.03.2015 at 10.00A.M. of lease hold rights of the 75 shops belonging to the 1st respondent situated at D.No.19-1-87, cinema Raod, Kakinada Town, East Godavari District for a period of 3 years, as illegal and arbitrary and for a consequential direction to set aside the same.

The case of the petitioners is that the 4th respondent obtained lease of the land admeasuring 1400 sq.yards from the 1st respondent choultry for a period of 70-90 years for its own purpose. Thereafter, the 4th respondent has offered to let out the same to various persons after constructing the shops and promised to allot the shops to the persons who make the payment of non-refundable deposit of Rs.1.00 lakh. Accordingly, by collecting the amounts from the petitioners and various persons commenced the construction activities of the shops in the year 2005 and has completed in the year 2006. Thereafter, the said shops were allotted to the petitioners under a license deed. The Assistant Commissioner, Endowments Department extended the lease granted in favour of the 4th respondent in respect of 1400 sq.yards vide proceedings dated 18.05.1996. The said lease was extended for further period from 01.04.2002 to 31.03.2007 through proceedings dated 14.02.2006. It is also submitted that on 21.10.2007, the 1st respondent issued “No Objection” certificate stating that it has leased out the open land admeasuring 1400 sq.yards to the 4th respondent for a period of 70 years and it has no objection to give electricity connection to the buildings constructed by the 4th respondent. The petitioners have been paying the license fee regularly to the 4th respondent till 2011 and thereafter, the same were being remitted to the 1st respondent as on date. It is also submitted that

the 2nd respondent issued proceedings dated 29.10.2011, recommending the approval of the lease in favour of the sitting tenants on enhanced rent @ 34% over the existing rents and requested the 3rd respondent to pass appropriate orders. While so, the 4th respondent filed W.P.No.18170 of 2013 questioning the action of the 1st respondent in collecting rents directly from the petitioners basing on the report of the 2nd respondent dated 29.10.2011 and the same is pending. In spite of payment of license fees regularly, the 1st respondent issued eviction notices to the petitioners and the petitioners approached the 1st respondent requesting for extension of lease stating that they are willing to pay the enhanced licence fee upto 30% on the existing licence fee. But the 1st respondent insisted for payment of 50% of the existing licence fee as a condition for withdrawal of the eviction notices. While the matter stood thus, the 1st respondent issued a paper notification on 08.03.2015 proposing to conduct auction from 23.03.2015 to 25.03.2015 in respect of the shops which the petitioners are having lease hold rights. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner submits that petitioners have invested amounts for construction of shops and petitioners are continuing as tenants. The 2nd respondent also issued proceedings dated 29.10.2011 recommending the 3rd respondent to regularize the leases in favour of the petitioners on enhanced rent @ 34% over the existing rents. But the 3rd respondent has not taken any decision. Meanwhile, the 1st respondent issued impugned auction notice dated 08.03.2015 which is in violation of Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Constitutions and Endowments Office Holders and Servant Service Rules, 2000 (for short 'the Rules'). He also contends that even otherwise, the 1st respondent has to invoke Section 83 of the Act for eviction of the petitioners and they cannot unilaterally evict the petitioners by issuing eviction notices. In support of his contentions he relied on judgment reported in ***P.Dilip Babu Reddy v. Government of Andhra Pradesh, rep., by its Principal Secretary, Endowments (Revenue) Department, Hyderabad and another.***

On the other hand, learned Standing counsel for the 1st respondent submits that

admittedly lease granted in favour of the petitioners expired and petitioners sought for extension for further period in the year 2011 and the said period also expired long back. Still, the petitioners are continuing and the proposal sent by the 2nd respondent is only in respect of three (03) years in the year 2011 and the same also lapsed. As such there is no further recommendation for extension of lease. She has produced a Circular dated 11.03.2015 issued by the Commissioner wherein the commissioner asked the authorities to go for public auction since rents fetched are much higher than extension of lease on enhanced rents which is in the interest of the institution. She also submits that since the license granted to the 4th respondent expired by 2007 and the recommendation made by the 2nd respondent to the 3rd respondent for extension same for a period of three years also expired long back, the petitioners have no legal right to continue. When once the petitioners have no right to continue, this Court will not exercise its jurisdiction under Article 226 of Constitution of India for their continuance, which would be against the public interest. In support of her contentions she relied on judgment in W.P.No.12674 of 2010 and batch dated 08.06.2010.

In this case, primarily there is no privity of contract between the petitioners and the 1st respondent and their case is that the 1st respondent granted lease of the open space to the 4th respondent and the 4th respondent in turn constructed the shops by the funds being provided by the petitioners. But when once the petitioners have no privity of contract with the 1st respondent, they cannot claim any right against the 1st respondent. The petitioners relied on proceedings dated 14.02.2006 which shows that the lease granted in favour of the 4th respondent expired on 31.03.2007. They have also relied on the letter dated 21.10.2007 addressed by the Executive Officer to the Assistant Divisional Engineer wherein it is stated that choultry has given only open space admeasuring 1400 sq.yards on lease for a period of 70 years and it has no objection to give electricity connections to the buildings constructed therein whereas the proceedings issued by the Assistant Commissioner show that the lease period is till 2007. Though the recommendations made by the 2nd respondent to the 3rd respondent for extension of lease for a period of three years i.e. from 2011 to 2014 expired, the petitioners continued for further period.

As such, they should not have any grievance, as there is no fresh recommendation by the Executive Authority for further extension. Further, Rule 3 of the Rules provide for extension of lease in the interest of the institution and the same is to be extended on the recommendation of the Executive Authority but not at the request of the petitioners. Since, admittedly there is no recommendation by the Executive Authority for further extension, petitioners cannot contend that Rule 3 of the Rules is violated. Another contention to be noted and rejected is that the respondents shall follow the procedure under Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and this Court in W.P.No.12674 of 2010 and batch also held as follows:

“The petitioners’ contention that, even if they are held to be encroachers under Section 83 of the Act, this Court should direct the respondents to act strictly in accordance with the procedure prescribed thereunder is a contention only to be noted to be rejected. Would this Court be justified in showing indulgence to those who have, admittedly, violated the law? It is well to remember that the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a Writ is not issued as of right or as a matter of course. (**C.R.Reddy Law College Employees’ Association, Eluru W.G.District vs. Bar Council of India, New Delhi**[\[5\]](#)). As the power exercised by this Court, under Article 226 of the Constitution of India, is discretionary it need not be exercised in every case where there is an error of law. One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue. It would not allow itself to be turned into a court of appeal to set right mere errors of law which do not occasion injustice. (**Sangram Singh v. Election Tribunal, Kotah**[\[6\]](#)). Even when some defect is found in the decision making process, this Court will exercise its discretionary power, under Article 226 of the Constitution of India, with great caution and only in furtherance of public interest and not merely on the making out of a legal point. This Court is required to keep larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to the conclusion that overwhelming public interest requires interference, would it intervene in the matter. (**Air India limited v. Cochin International Airport Limited**[\[7\]](#)). Persons, who continue to remain in illegal occupation of shops belonging to a Charitable Trust, cannot be heard to contend that, though they continue to remain in illegal occupation, the respondents can only have them evicted in accordance with the summary procedure prescribed under Section 83 of the Act.”

In **P.Dilip Babu Reddy’s case (supra 1)** relied upon by the petitioner’s

counsel, wherein that was a case where the respondent temple filed O.A. whereas in the present case, the respondents have not invoked Section 83 of the Act. As such, the same is not applicable to the facts of the present case. In view of the law laid down in W.P.No.12674 of 2010, the contentions of the petitioners cannot be accepted. Learned Standing counsel also produced written instructions wherein it is stated that auction was conducted for 24 shops on 24.03.2015 which includes the present shops and the choultry secured an income of Rs.2,11,500/- as against the previous monthly rent of Rs.24,120/-.

In view of above facts and circumstances, I do not see any merit to entertain the writ petition. Hence, the writ petition is dismissed. However, since the auction has been held, the petitioners can be continued on enhanced rent of 35%, by giving an undertaking that they shall vacate the shops and handover the same to the 1st respondent enabling the successful bidders to occupy the said shops after finalization of tender process.

There shall be no order as to costs. As a sequel, miscellaneous petitions, pending, if any shall stand closed.

A.RAJASHEKER REDDY, J

24.03.2015

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