

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.10048 of 2012

ORDER:

This Writ Petition is filed seeking the following relief/s:-

“...to issue a Writ of Mandamus or any other appropriate Writ or Writs, Order or Direction, declaring and setting aside the Notice dt.31.3.2012 in Lr. No. 4/GPA/2012 on the file of the third respondent herein, as illegal, arbitrary, without jurisdiction and violative of Arts. 14, 19(1)(g) and 300-A of Constitution of India; Award costs and pass such other or further orders as are deemed fit and proper in the circumstances of the case.”

2. I have heard the submissions of the learned counsel for the writ petitioner and the learned standing counsel for the third respondent. I have perused the material record.

3. The case of the writ petitioner and the facts that lead to the filing of this writ petition, in brief, are as follows: - “The father of the petitioner was a freedom fighter and he used to do stamp vending business. Considering his services as a freedom fighter and his financial status, the Gram Panchayat, Asifabad had allotted to him, a mulgi in Gram Panchayat shopping complex in the year 1989 for carrying on stamp vending business as well as other businesses. The petitioner’s father had carried on stamp vending business and provisions stores in the said mulgi with the assistance of his family members including the petitioner. Since his death in the year 2002, the petitioner and his brothers have been running the said shop in the said mulgi. During the year 2003, by a resolution passed by the Gram Panchayat, Asifabad one more room, as an extension to the room allotted in the year 1989 was allowed to be constructed, on lease basis not only by the petitioner but also by the other lessees of the mulgis of the Gram Panchayat Shopping complex. On demand, the petitioner had also deposited an amount of Rs.30,000/- with the Gram Panchayat for the purpose of such additional room. Having so deposited the amount demanded under receipt dated 09.10.2003 and after making a further deposit of Rs.20,000/- under receipt dated

09.10.2003, the petitioner, having constructed the additional room, is continuing his business as usual. The original rent was Rs.400/- per month in the year 1989 and the size of the room originally given on lease was 12' x 10'. The size of the additional room is 21' x 12'. As on the date of the institution of the writ petition, the petitioner was paying an amount of Rs.2,600/- per month as rent for the said rooms. He is regular in payment of rents and is abiding by the conditions that are being imposed by the Gram Panchayat. While the things stood thus, on 22.02.2010, the Gram Panchayat, Asifabad had issued a notice to the petitioner directing him to vacate the additional room without heeding to the submissions of the petitioner that he is using the additional room as a godown for his business purposes. The Gram Panchayat had further issued a notice dated 25.03.2011 directing the petitioner to vacate one of the rooms. Therefore, the petitioner made a representation on 01.05.2011. On that representation, he was allowed to continue in the premises. While so, the third respondent Gram Panchayat had again issued another notice dated 31.03.2012, which is now impugned in this writ petition, asking the petitioner to remove the stocks and articles which are present in the second room and hand over the same to the Gram Panchayat within three days. The petitioner, who is a lessee, was permitted to construct the additional room as an extension to the original mulgi, which was leased out to his father and in which he was continuing as a lessee. The impugned notice is incomprehensible as it states that two rooms within the mulgi are to be vacated whereas there is only one room behind the mulgi originally leased out. The additional room is being used as a godown by the petitioner. If the petitioner is directed to vacate the room, he cannot carry on his business conveniently and profitably. The other lessees of the shops of the Gram Panchayat Shopping Complex are continuing their businesses in the originally allotted and additional rooms allowed to be constructed and there is no basis for the third respondent to ask the petitioner alone to vacate the additional room. The notice does not say about the refund of the deposits, which are made by the writ petitioner as demanded by the Gram Panchayat. The impugned notice is

illegal and arbitrary and violative of fundamental rights guaranteed under Articles 14, 19(1)(g) and 300A of the Constitution of India.”

4. The defence of the third respondent, in brief, is this: - “The material allegations in the writ petition are false. The father of the petitioner, who was a lessee of one of the mulgis in the shopping complex of the Gram Panchayat was demanded by a notice to deposit Rs.30,000/- towards construction of one additional room. On deposit of the said advance amount with the Gram Panchayat, the petitioner had acquired three rooms in the shopping complex and paying rent of Rs.2,600/- per month for the said rooms. The said advance/deposit is refundable on the petitioner vacating the third room additionally constructed. The Gram Panchayat had issued a notice directing to vacate the additional third room in order to keep the shopping complex in a uniform manner with all the shop rooms in the occupations of the other tenants. All the other tenants in the shopping complex are having two rooms in their possession – one room leased out and one additional room allowed to be constructed, whereas the petitioner is having a third/additional room in his possession. The petitioner was paying a monthly rent of Rs.2,600/-, as if only two rooms are let out to him and are in his occupation. Therefore, the Gram Panchayat, Asifabad is losing income towards rent of the third room. Hence the writ petitioner was served with notices dated 25.03.2011 and 31.03.2012 directing him to vacate the third room and hand over the same to the Gram Panchayat. The petitioner was directed only to vacate the third room and continue his business in the remaining two rooms in the shopping complex, i.e., the shop room originally leased out and the additional room behind it as in the case of the other tenants in the occupation of the mulgis in the shopping complex. The impugned notice is not in violation of the provisions of the Constitution of India. The writ petition is devoid of merit and is liable to be dismissed.”

5. The learned counsel for both the sides made submissions in line with their respective pleadings.

6. The learned counsel for the writ petitioner fairly submits that instead of constructing one room in addition to the mulgi already leased out, the petitioner had constructed two rooms and therefore, the petitioner is now in possession of three shop rooms and that the additional third room is being put to use as a godown for the business in provisions, which the petitioner is carrying on in the mulgi leased out to him in the shopping complex of the Gram Panchayat and that the third room, which is the additional room behind the original mulgi, is not having independent access and is only having access from the mulgi originally leased out and that the petitioner is prepared to pay the additional rent for the third room as may be reasonably fixed by the Gram Panchayat instead of vacating the said room, as the third room is being used as a godown and its use is essential for the smooth and profitable carrying on of his business in the mulgi leased out. He would also submit that since there is no independent access to the third room, the Gram Panchayat cannot put the room to any profitable use even if it is vacated by the petitioner.

7. The only grievance of the Gram Panchayat as per the submissions of the learned Standing Counsel for the third respondent is that the petitioner, having constructed the additional third room, is paying the same rent of Rs.2,600/- per month as if two rooms are under his occupation as a lessee and that, therefore, the Gram Panchayat is losing income towards rent of the third room.

8. In view of the submission of the learned Standing Counsel for the third respondent, the ends of justice would be met if the writ petitioner is directed to approach the third respondent Gram Panchayat for negotiations for fixing enhanced rent for the entire premises in his occupation by way of an amicable settlement, if any possible, from any date agreeable i.e., either from the date of construction of the additional room or from a later date.

9. At this stage, the learned counsel for the writ petitioner submits that

a time of four weeks may be sufficient for negotiations and to arrive at an amicable settlement in that regard. It is also canvassed by the learned Standing Counsel for the third respondent that in case of failure to arrive at an amicable settlement in regard to the enhanced rent, a default clause may be imposed giving liberty to the Gram Panchayat to take back the possession of the third room from the petitioner by following the procedure established by law and make use of the same in a manner which benefits the Gram Panchayat and augments its income.

10. Having regard to the submissions, the Writ Petition is disposed of giving liberty to the writ petitioner, if he so desires and if he is so advised, to approach the third respondent Gram Panchayat for negotiations for fixing enhanced rent for the entire premises in his occupation by way of an amicable settlement, if any possible, from any date agreeable i.e., either from the date of construction of the additional room or from a later date. It is needless to mention that this exercise may be completed within a period of four (04) weeks from the date of receipt of a copy of this order and that on failure to arrive at an amicable settlement in this regard, the third respondent Gram Panchayat is at liberty to recover the possession of the third room from the petitioner by following the procedure established by law. There shall be no order as to costs.

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

M.Seetharama Murti, J

24th November, 2015
Bvv