

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.7337 of 2013

Dated : 06.07.2015

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Between:

Samenabegam W/o.Nageer Hamad,
Aged 45 yrs, Occu : Business, IDSMT,
Shop C.No.6, Main Road Municipal complex,
Gadwal Town, Mahaboobnagar District & 32 others

.. Petitioners

And

The Government of Andhra Pradesh,
rep., by its Principal Secretary,
Municipal Administration and
Urban Development (J-1) Department,
Secretariat, Hyderabad & 2 others

.. Respondents

This Court made the following :

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ORDER :

The petitioners are the lease holders of shops in IDSMT Shopping Complex, Old Bus stand, Gadwal, Mahaboobnagar District. According to the petitioners, originally, the lease was granted to some other persons. But with the consent of the said lease holders, petitioners have applied for transfer of lease in their favour and the Municipality has agreed for such conversion and lease was transferred in their names, in the year 2007. Thereafter, on periodical increase of lease to 33 1/3%, the petitioners continued to occupy and enjoy the said shops. While so, notices were issued on 16.11.2012 holding that the lease granted to them expired on 21.06.2010 and directed the petitioners to vacate the premises before 28.11.2012. The reason for refusal to grant further extension and directing the petitioners to vacate the premises was that the period of 25 years of lease was completed, therefore, the question of renewing the lease further would not arise. The petitioners were also directed to pay the dues as mentioned in the respective notices issued to individual petitioners. Challenging the said notices, this writ petition is instituted.

2. At the time of admission, this Court on 12.03.2013 granted interim stay and on account of the said interim order, the petitioners continued to occupy the subject shops till date.

3. Learned counsel for the petitioners submits that in the name of the petitioners, lease was granted on 01.12.2007 and therefore, for all practical purposes, the lease commences from that date. As per the rules which govern granting of lease and extension of lease, the lease can be extended by the Municipal Council for a further period of three years and thereafter lease can be extended for further period with the prior approval of the Government beyond the extended period of three years. Since the lease is vested in the petitioners only in the year 2007, the petitioners are entitled to continue the lease till the year 2022 and therefore, the impugned notices issued on the ground that the petitioners have completed 25 years is not valid and the same is liable to be set aside on that ground alone.

4. Learned counsel further contends that petitioners have been paying increased lease amount from time to time as directed and there are no arrears of amounts payable by them. Therefore, throwing them out at this stage even before they have completed 25 years of lease period and going for public auction would cause grave hardship and suffering.

5. Learned Standing counsel submits that the existing lease was

transferred in the name of the petitioners and therefore, while computing the lease period, it has to be computed from the date of grant of original lease and since the petitioners lease has completed 25 years, it cannot be extended, in view of the statutory mandate and therefore, there is no illegality or irregularity in the order impugned in this writ petition. Learned standing counsel also submits that the subject matter of this writ petition is covered by the decision of the Division Bench of this Court in W.P.No.6354 of 2009 and in view of the said decision, this writ petition is liable to be dismissed.

6. As seen from the proceedings issued in favour of the individual petitioners, in the year 2007 the names of the petitioners are recorded as transferees in the place of original lease holders. It is not in dispute that the lease was originally granted in favour of the respective persons as mentioned in the proceedings and recorded the names of the petitioners much later and the lease period from the date of original grant of lease has completed 25 years. There is no merit in the contention of the learned counsel for the petitioners that since their names are entered for the first time only in the year 2007, that day should only be reckoned for the purpose of computation of total period of lease. As the statute mandate a clear embargo that no lease can be renewed beyond the period of 25 years, I see no error in the impugned notice issued against the petitioners. On account of the interim order granted by this court, the petitioners have also completed three more years of lease period.

7. Even otherwise, no right is vested in the petitioners to contend that the lease has to be renewed in their favour. The property of the Municipality is for the benefit of the people living in the Municipality and funds have to be utilized for various development activities within the Municipality. One of the sources of acquiring funds is by leasing out its properties by conducting public auction. Thus, if higher lease value is accrued to the Municipality, its funds gets augmented to be utilized to provide better services. Thus, it is in public interest to conduct public auction, so that better lease value can be secured to the properties owned by the Municipality. The instant case is no exception. As a normal rule all public properties have to be leased out by conducting public auction. The petitioners have no manner of right to say that their lease has to be renewed as a matter of course. The rules only vest discretion in the competent authority to renew, but it is not mandatory. Thus, not renewing the lease and going for public auction by the Municipality, cannot be said as illegal, warranting interference by this court.

8. Thus, viewed from any angle the impugned notices are issued in valid exercise of power and in public interest. Therefore, no interference is called for in this writ petition. Accordingly, the Writ Petition is dismissed.

9. However having regard to the fact that the petitioners are continuing in the subject shops, they may be allowed to continue till the auction is conducted and finalized. The respondents shall take immediate steps to conduct public auction to grant lease of the said shops and after finalizing the lease, the same should be vested in the persons who have participated and were successful in the auction. The petitioners shall vacate the premises soon after the auction is finalized. The entire exercise of conducting auction and vesting the lease in favour of highest bidders shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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

06th July, 2015
Rds

P.NAVEEN RAO,J