

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**MONDAY, THE TWENTY EIGHT DAY OF SEPTEMBER TWO THOUSAND
AND FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.31168 of 2015

Between:

Mohd. Raheem, S/o. Mohd. Rajju Mian,
Aged about 28 years, Occ: Business,
R/o. 13-611, Rahmath Nagar, Mehdarwada,
Mancherial, Adilabad District.

.. Petitioner

AND

The State of Telangana,
Rep. by its Principle Secretary,
Municipal Admn. & Urban Development,
Secretariat, Hyderabad & 2 others

.. Respondents

The Court made the following:

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ORDER:

The petitioner claims that his father established a shop on the land belonging to the 2nd respondent Municipality in the year 1980 after making temporary construction and is running pan shop and general items. After the demise of his father, the petitioner is running the said shop. Adjacent to the shop of the petitioner, the 2nd respondent Municipality has constructed mulgies. There is a small gap between the petitioner's shop and the muglies constructed. The petitioner came to know that the 2nd respondent Municipality is in the process of conducting auction to lease out the shops and in the process, also seeking to remove the petitioner. In such an event, grave prejudice would be caused to the petitioner and, therefore, the petitioner prays that he should be given shop in the newly constructed complex on priority basis. To this extent a representation is submitted by the petitioner on 03.09.2015 to the 2nd respondent Municipality and contending that the said representation is not disposed of, this writ petition is filed.

2. As seen from the averments made in the affidavit filed in support of the writ petition and material papers including the photographs enclosed, admittedly the petitioner is in occupation of the 2nd respondent Municipality land and constructed a temporary shop and the petitioner is paying occupation tax to the 2nd respondent Municipality. Adjacent to the shop of the petitioner, in the open land the 2nd respondent Municipality has constructed a shopping complex. If the 2nd respondent Municipality intends to lease out the shops in the shopping complex, it has to follow the due process as mandated by the Andhra Pradesh Municipalities Act, 1965, and the Rules made thereunder. In terms of the rules governing the lease of properties belonging to the 2nd respondent Municipality, such lease can be granted only after conducting open auction and after following the due procedure. Thus, without conducting open auction and without following the due process, no shop can be allotted to any person and, therefore, no priority can be assigned to the petitioner by allotting shop on nomination basis. At the most, the petitioner can claim for allotment of shop on equitable consideration after participating in the auction and if he is willing to offer the same lease amount as offered by the highest auction participant. Only to that extent discretion can be exercised by the 2nd respondent Municipality, but not otherwise. Thus, the relief sought in the present writ petition cannot be granted. However, it is open to the petitioner to participate in the auction as and when taken up by the 2nd respondent Municipality and if he is not the highest bidder and if he is willing to offer the highest bid amount, the same shall be considered by the 2nd respondent Municipality on equitable consideration and take appropriate decision, as warranted by law.

3. With the above observations, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 28th September, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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Date: 28th September, 2015

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