

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.5879 OF 2015

ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the respondents in contemplating to dispossess the petitioners from their respective shops in pursuance to the individual notice No.B3/4542/1/2014, dated 18.11.2014 issued by the 3rd respondent to the petitioners for their eviction, from the municipal shops, without considering the representations of the petitioners and taking a decision on the same in accordance with law as illegal and arbitrary and consequently to grant stay of all further proceedings dated 18.11.2014.

2. It is the case of the petitioners that the petitioners 1 to 21 have been allotted shops in Clock Tower, Mahabubnagar and the petitioners 22 to 56 have been allotted shops in Market Road, Mahabubnagar and that they are in continuous possession of their respective shops since 1975-76 and 1978 on monthly rent basis and have been revising the lease from time to time as per the stipulated conditions put forth by the Mahabubnagar Municipality and they are solely dependent on the said shops for their livelihood. It is stated that the 3rd respondent has been enhancing the rent at the rate of 33.3% for every three years and the petitioners also agreed and paid the same regularly without any default and that the subordinates of 2nd respondent collecting revised rents for every three years from time to time and issue the receipts and lease agreements in favour of the petitioners. The subject shops have been obtained on lease by the petitioners from the respondents and they are regular in payments of rents since 35 years. The petitioners invested huge amounts in businesses after obtaining loan from the Banks and financial institutions. The Service Tax was also collected from the petitioners @ 12.36% on the monthly rent. It is stated that the petitioners have employed staff ranging around 5 to 10

in number for assisting them in carrying out their respective businesses thereby nearly 3500 to 4000 members and their families are also dependent on the said shops for their day to day bread and butter. It is stated that the subject shops are medical shops, cloth shops, furniture shops, etc. For regular renewal of licence to the medical shops, it is essential that the licence premises on which the licence is granted should be indicated and the medical shops have to furnish the said addresses, which cannot be dislocated. It is stated that 21 shops located in Clock Tower and 35 shops located in the Market Road formed into Mahabubnagar Municipal Rental Shops Association to protect the interest of individual members of the Association. All of a sudden, the Municipal Corporation, Mahabubnagar-3rd respondent issued individual notices dated 18.11.2014 to the petitioners directing them to vacate the shops within 15 days from the date of receipt of the said notice. Aggrieved by the same, this writ petition is filed.

3. Heard learned Counsel for the petitioners as well as learned Advocate General (Telangana State) appearing on behalf of the respondents.

4. Mrs.S.Nanda, learned Counsel for the petitioner submits that after bifurcation of State of Andhra Pradesh into the State of Telangana and the State of Andhra Pradesh, unless the Government of Telangana frames fresh policy, Government Order issued by the earlier Government cannot have force of law. She would also contend that when the individual notices have been issued to the petitioners in W.P.No.23109 of 2011 basing on the G.O.Ms.No.120, Municipal Administration & Urban Development Department, dated 31.03.2011, was dismissed by the learned Single Judge by order dated 17.08.2011. She further submits that Writ Appeal No.722 of 2011 has been filed against the order dated 17.08.2011 in W.P.No.23109 of 2011, the Hon'ble Division Bench held that the subject G.O i.e.,

G.O.Ms.No.120, MA & UD Department, dated 31.03.2011 has no retrospective operation. She further submits that in the present case on hand, the leases were granted prior to issuance of G.O.Ms.No.120, MA & UD Department, dated 31.03.2011, as such, notices issued to the petitioners herein basing on the aforesaid G.O has no retrospective effect and they cannot be pressed into service for eviction of the petitioners from the shops leased out to them. She also submits that in similar circumstances, wherein leases have not been extended, this Court passed interim orders in W.P.Nos.15057 of 2013 and 15103 of 2013 dated 28.08.2013. In view of the aforesaid orders, she submits that the impugned notices are illegal and arbitrary. She also placed her reliance on Sections 101 and 102 of the Andhra Pradesh Reorganisation Act, 2014.

5. On the other hand, learned Advocate General appearing for the respondents would submit that the petitioners have earlier filed W.P.Nos.6419, 6665, 6790, 7086 of 2013 and learned Single Judge has passed Common Order dated 03.01.2014 wherein this Court has directed for conducting of auction and that the learned counsel for the petitioners also sought time till 30.04.2014. Learned Single Judge also permitted the petitioners therein to participate in the auction, if they are not in arrears of payment of the lease/licence amount and that if the petitioners were to emerge as the best bidders, they can continue in the same shops in which they are carrying on their business. Learned Single Judge also held that the petitioners therein will execute individual undertakings with the first respondent therein that in case they do not emerge as the best bidders at the public auctions, they will vacate the premises in question latest by 30.04.2014 and it is also made clear that the petitioners should pay licence/lease fee from month to month. He further submits that when once the Common Order passed by the learned Single Judge has become final against the petitioners and this Court has directed to conduct auctions by

31.01.2014, for the same relief and same cause of action, the present writ petition is not maintainable. He also submits that the petitioners are continuing for the last more than 35 years and now by virtue of orders passed by the Hon'ble Division Bench in W.P.No.6354 of 2009 dated 25.08.2009, and also by virtue of G.O.Ms.No.56, dated 05.02.2011, wherein the maximum period of lease can be granted not beyond 25 years, petitioners are not entitled to continue as tenants since, admittedly, the petitioners are leaseholders since 1975-1976.

6. Though the petitioner has raised several questions, as referred to above, but I am afraid I cannot go into all those aspects because in W.P.Nos.6419, 6665, 6790, 7086 of 2013 filed by petitioners, Common Orders dated 03.01.2014 have been passed and the learned counsel for the petitioners in those writ petitions stated that the petitioners herein will vacate the premises by 30.04.2014. Learned Single Judge also directed to conduct auction latest by 31.01.2014 and the order has become final. When once petitioners have not raised any issues before the learned Single Judge, now, it is not open for the petitioners to raise all those issues once again by filing the present writ petition. When once the petitioners themselves agreed that they would vacate the premises by 30.04.2014 in earlier Writ Petitions, they cannot complain that unless a policy decision is taken, they cannot be evicted. The petitioners are estopped from raising such issues by filing fresh writ petition. May be petitioners have good case, but when once the writ petitions filed for same relief have been disposed and has attained finality, again present writ petition for same relief cannot be entertained. Remedy of petitioners lies elsewhere and not by filing the present writ petition.

7. It is pertinent to note here that auction has not been conducted as directed by the learned Single Judge in Common Order dated 03.01.2014 in W.P.Nos.6419 of 2013 and batch. In view of above facts and circumstances, I do not see any merit in the writ petition.

Since respondents have not conducted auction, instead of keeping the shops in question vacant by evicting petitioners till fresh auction is conducted, the petitioners be permitted to continue till fresh auctions are conducted and finalized and successful bidders are handed over possession. The petitioners shall execute undertakings with the respondent Municipality that they will vacate the premises as and when required by the respondent Municipality, if they do not emerge as successful bidders, in the auctions conducted by the respondent Municipality, in pursuant to orders passed by the learned Single Judge on 03.01.2014 in W.P.Nos.6419 of 2013 and batch. However, the petitioners shall continue to pay the licence fee at 33.3% over and above the existing rent till they vacated.

With the above directions, the writ petition is disposed of. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

10.03.2015
kvs.

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.5879 OF 2015

Date: 10.03.2015

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