

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.37958 of 2015

-

Dated 23rd November, 2015

Between:

M.Mahesh

...Petitioner

And

The State of Andhra Pradesh rep.by its Principal Secretary, MA & UD, Secretariat,
Hyderabad and others

...Respondents

Counsel for the petitioner: Sri G.L.Nageswara Rao

Counsel for respondent No.1: AGP for Municipal Administration (AP)

The Court made the following:

ORDER:

This writ petition is filed for a mandamus to declare the action of respondent No.4 in issuing notice in Rc.No.29285/A7/08/Zone-II(R), dated 18.08.2015, and the consequential open auction notice of respondent No.2 issued vide

Rc.No.376/14/A2/Zone-2(R), dated 13.11.2015, in so far as shop No.3, Pithapuram Shopping Complex, Visakhapatnam is concerned without completion of 25 years of lease period as illegal and arbitrary.

I have heard Sri G.L.Nageswara Rao, learned counsel for the petitioner, and Sri S.Lakshmi Narayana Reddy, learned Standing Counsel for GVMC appearing for respondent Nos.2 to 4.

Shop No.3 of Pithapuram Shopping Complex, Ward No.16, Visakhapatnam (hereinafter referred to as 'shop in question') was initially leased out in favour of a third party in the year 1982. As the original lessee has violated the lease conditions, lease was transferred in favour of the petitioner vide proceedings, dated 26.06.2000, on a monthly rent of Rs.907/- for a period of three years. It is the case of the petitioner in respect of which there is no dispute that the lease was renewed from time to time and the period for which the lease was last renewed ended in the year 2012. Accordingly, the petitioner has been in unauthorised occupation of the shop since then, albeit by paying the rent which stood at Rs.2,151/- as at present.

In consonance with its policy, respondent No.2 put the leasehold rights of various shops, including the shop in question, to auction. As a part of this, its Estate Officer has issued notice, dated 18.08.2015, to the petitioner wherein it is stated that though the lease period has expired on 01.04.2012, the petitioner has been continuing in the premises and therefore, he was called upon to vacate the shop within 15 days from the date of receipt of the same. Thereafter, auction notice was issued on 13.11.2015 on behalf of respondent No.2 fixing 24.11.2015 and 25.11.2015 at 11.00 am as the dates & time of auction of the shops. Feeling aggrieved by the same, the petitioner has filed this writ petition.

The main plea of the petitioner is that under Rule 12(4) of the Andhra Pradesh Municipalities (Regulation of Receipts and Expenditure) Rules, 1968 (for short 'the Rules') the Municipal Council is bound to renew the lease period exceeding three years upto 25 years with the prior permission of the Government, if the lessee agrees to the conditions stipulated in Clauses (a) to (c) thereof.

At the hearing, Sri G.L.Nageswara Rao, learned counsel for the petitioner, made his submissions based on the above-mentioned Rule.

Sri S.Lakshmi Narayana Reddy, learned Standing Counsel, submitted that the

shop in question was leased out in April, 1982 and the period of 25 years had expired on 31.03.2007 itself and that therefore, Rule 12(4) of the Rules is of no help to the petitioner. Alternatively, he has submitted that though the extended lease period has expired on 01.04.2012, the petitioner did not seek renewal of the same and for more than three years, the petitioner has been continuing in the shop in question without valid lease. The learned counsel has placed reliance on the judgment, dated 25.08.2009, in W.P.No.6354 of 2009, wherein a Division Bench of this Court interpreted Rule 12 of the Rules and held that no vested right exists in a lessee to insist that the lease must be renewed for a period of 25 years.

Rule 12(4) of the Rules which is relevant for the present case reads as under:

“Renewal of lease of immovable properties:- The Municipal Council may renew the lease of immovable properties for a period of three years at one time and with the prior sanction of the Government renew the lease for a period exceeding three years and not exceeding twenty-five years at a time without conducting public auction if the present lessee agrees to renew the lease in his favour at the rent as fixed hereunder and for revision of the rent once in three year as per the procedure specified below:

(a) Rent at 10% of the current market value of the property per annum i.e. both building and land as per market value of the land and construction rates of the structures and buildings fixed by Registration Department under the Andhra Pradesh Revision of Market Value Guidelines Rules, 1998, or

(b) Rent at 33 1/3 percent above the earlier rent, or:

(c) Prevailing rent of such properties in the vicinity whichever is higher.”

Undoubtedly, the plain language of Rule 12(4) of the Rules reveals that if a lessee is interested in continuing the lease beyond three years, he may seek renewal from time to time upto a maximum of 25 years provided he complies with Clauses (a) to (c) thereof. Even the Division Bench of this Court in the above-mentioned judgment while observing that augmentation of income for a public body is of paramount importance held that the municipality in that case shall not propose or recommend nor the Government accord sanction for renewal of lease of a municipal property beyond a period of 25 years without conducting public auction.

However, the facts in the present case disentitle the petitioner to invoke the benefit of Rule 12(4) of the Rules. Reckoned from April, 1982 when the lease was first granted to the original lessee, the period of 25 years has expired as far back as

31.03.2007 itself. From the proceedings, dated 26.06.2000, issued in favour of the petitioner by respondent No.2, it is evident that the lease was transferred in his name pursuant to the decision of the Municipal Corporation to cancel the lease granted to one N.Trinadha Rao in the year 1982. Though the petitioner had been paying the revised rent from time to time, for the purpose of computation of the period of 25 years, the date on which the lease was originally granted requires to be reckoned and not the date on which the lease was transferred in the name of the petitioner. Even otherwise, having not requested for renewal of lease from April, 2012 it lies ill in the mouth of the petitioner to fall back upon Rule 12(4) of the Rules when fresh auction notice was issued. Failure of the petitioner to request for renewal of lease for more than three years shows that he has no *bona fides*.

For the above-mentioned reasons, I am not inclined to interfere with the impugned proceedings. The petitioner is, however, entitled to participate in the auction along with others.

Subject to the liberty given to the petitioner, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WP.M.P.No.48828 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

23rd November, 2015

VGB