

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1129 OF 2012

ORDER

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The case of the petitioner is that he is the lessee of the shop No.7 belonging to 1st respondent-Devastanam and he was inducted into possession by virtue of auction conducted on 07.01.2002 having become the highest bidder. Initially the lease was granted from 2002-2004 on a monthly rent of Rs.2,150/- and consequently the same was extended from time to time and presently the petitioner is paying a rent of Rs.6,000/- towards the lease amount. While so, the 1st respondent filed O.A.No.12/2007 and order of eviction was passed against the petitioner, but subsequently, on request made by the petitioner, lease was extended from 01.02.2009 to 31.01.2012 and petitioner was in continuous possession as per the lease agreement entered between the petitioner and the 1st respondent. Thereafter, the 1st respondent issued impugned auction notice without initiating proceedings of eviction against the petitioner. The petitioner also filed representation on 19.12.2011 to the 2nd respondent seeking extension of lease as per G.O.Ms.No.866 and while the petitioner was expecting a positive reply from the 2nd respondent, the 1st respondent proceeded with the auction on 21.12.2011 for granting lease hold rights in respect of shop No.7. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the 1st respondent admitting that the petitioner was the highest bidder in the auction held on 07.01.2002. Initially the lease was for a period of two years from 01.02.2002 to 31.01.2004 and thereafter the same was extended from 01.02.2004 to 31.01.2006 on enhanced rent of Rs.2,902/- Thereafter, when petitioner made a representation for extension of lease for further period of two years i.e., from 01.02.2006 to 31.01.2008 on enhanced rent of Rs.4,000/- per month to the 2nd respondent, the 2nd respondent submitted a report to the Commissioner vide letter dated 22.04.2006 for extension of lease for two years and the Commissioner has returned the said proposal instructing the Executive officer to submit a report

on certain points. In pursuant to the same, the Executive officer submitted a report to the 2nd respondent stating that one Sri J.J.Kumar submitted a representation expressing his willingness to pay an amount of Rs.5,500/- per month for the same shop, which the petitioner is paying Rs.4,000/-. Meanwhile, as the petitioner's lease has expired, the Executive Officer filed O.A.No.12/2007 before the Deputy Commissioner, Kakinada for eviction of the petitioner and the said O.A. was allowed. Challenging the same, the petitioner filed Revision petition No.67/2008 before the 2nd respondent and the said revision was disposed of on 28.02.2009 permitting the petitioner to continue for a period three years from February, 2009 with certain terms and conditions. The respondent also denied the contention of the petitioner that after passing of orders in O.A., the lease of the petitioner was extended on his request. It is also stated that the petitioner has concealed the fact that he has filed Revision Petition against the orders of O.A. and that he is continuing as per the orders passed in revision petition. It is stated that the Executive Officer has conducted auction on 21.12.2011 for shop No.7 along with Room No.1 and for shop No.7 among 6 persons who have participated, one Sri P.V.L.S. Prasad has become the highest bidder for an amount of Rs.15,201/ per month for three years period i.e., 01.02.2012 to 31.01.2015 and one Sri Adagala Ganapathi has become the highest bidder for an amount of Rs.20,800/- per month for three years period i.e., 01.02.2012 to 31.01.2015 for Room No.1 out of 6 persons who have participated. Further in the counter it is stated that as per the orders in R.P.No.67/2008, the lease of the petitioner expired on 31.01.2012 and the Executive Officer can take possession of the shop through Assistant Commissioner following Section 84 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') and sought for dismissal of the writ petition.

Learned counsel for the petitioner submits that though the interim order is operating in favour of the petitioner, the respondents have highhandedly evicted the petitioner taking law into their hands. He also submits that respondents have to follow due process of law before evicting the petitioner. He further submits that though the orders passed in the Revision Petition filed by the petitioner are in force and even before the expiry of 3 years lease period granted by the 2nd respondent, auction notice has been issued and was

conducted on 21.12.2011 disobeying the orders of the 2nd respondent. The respondents neither followed the interim orders passed by this Court nor orders passed by the 2nd respondent in the Revision Petition.

On the other hand, Smt K. Lalitha, learned Standing counsel for respondent temple submits that the writ petition is liable to be dismissed for suppressing the fact that the petitioner has filed Revision Petition No.67/2008 and for not mentioning about the same in the writ affidavit. She also submits that as per the orders passed by the 2nd respondent in the Revision Petition, auction is proposed to be conducted and possession was taken, as such there is no illegality committed by the respondents as they have followed the orders passed in the Revision, which have become final.

This Court on 20.01.2012, while admitting the writ petition passed the following interim order.

“Therefore, I do not consider that the ends of justice would be sub-served if the petitioner is allowed to carry on business beyond 01.02.2012. Therefore, there shall be an injunction that should be granted against the petitioner from carrying on any business in shop No.7 belonging to respondent No.1-temple with effect from 01.02.2012.

It is certainly open to the petitioner to deliver vacant possession of the shop room to respondent No.1-temple on his own, if he were not the successful bidder at the auctions that were conducted on 21.12.2011. If, on the other hand, he were to be the highest bidder for shop No.7, it is certainly open to him to continue to occupy the said shop room and carry on his business, in accordance with the fresh grant.

If the petitioner fails to handover vacant possession of the shop room, on or immediately after 01.02.2012, it is open to respondent No.1 to initiate appropriate action in accordance with law seeking his eviction there from and also recover damages.

The W.P.M.P. is accordingly ordered.”

It is an admitted fact that petitioner filed Revision Petition No.67/2008 and the said Revision was disposed of with certain directions. As per the orders passed in the Revision, the lease of the petitioner was only for a period of 3 years and the same ends by February, 2012 and therefore, there is no prohibition in conducting the auction in advance, in order to see that the lease is handed over

to the successful bidder in time. Admittedly, having filed the Revision, the petitioner has suppressed the said fact in the writ petition, as such; the writ petition is liable to be dismissed on that sole ground. In the counter it is stated that after following due process of law, the possession has been taken over and the same was handed over to the successful bidder. As such the same cannot be found fault with. The writ petition is liable to be dismissed on sole ground of suppression of fact of filing revision petition and order passed in the same. The person who does not come to Court with clean hands is not entitled for any relief in exercise of jurisdiction under Article 226 of Constitution of India. Though learned counsel for the petitioner argues that the respondents have violated the interim orders passed by this Court, when the main writ petition itself has come up for final hearing, any interim order passed will merge with the final order.

In view of the above facts and circumstances, I do not see any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 23.09.2015

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