

HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR
WRIT PETITION No. 3006 of 2016

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ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Medical & Health appearing for respondent Nos.1 to 3 and learned Government Pleader for Revenue appearing for respondent No.4. A counter affidavit has also been filed by the 3rd respondent.

The petitioner questions the action of the 2nd respondent in sealing his medical shop located within the Government General Hospital, Kakinada, East Godavari District, on 27.01.2016 without following due process of law.

The petitioner has filed a copy of panchnama report, dated 27.01.2016, which reveals that as per the orders of the District Collector dated 27.01.2016, the Revenue Divisional Officer, Kakinada, and other officials visited the shop in question, and after verifying that there are no Court orders protecting the possession of the shop by the petitioner, they have sealed the shop. The petitioner states that a tender notice was issued by the 2nd respondent on 31.05.2010 for running of a medical shop in the premises of the Government General Hospital,

Kakinada, and as he was the highest bidder after negotiations, he was granted lease. While the petitioner states that he complied with all the terms and conditions of the tender and possession was given to him on 28.01.2011 and one year's rent was deposited as caution deposit. While the lease was not extended beyond 31.01.2013, the petitioner received a letter dated 27.12.2012 from the 3rd respondent putting him to notice that he has to vacate the premises after expiry of the period. The representation of the petitioner for renewal was also not considered. The petitioner, then, filed W.P.No.2278 of 2013 before this Court, which was disposed of on 29.01.2013 requiring the 3rd respondent to consider the petitioner's representation dated 21.01.2013. However, the said representation was, thereafter, rejected by the 3rd respondent on the ground that G.O.Ms.No.54, dated 14.03.2011, does not authorize extension of lease. Hence, the petitioner, thereafter, filed O.S.No.217 of 2013 before the IV Senior Civil Judge, Kakinada, challenging the order of the 3rd respondent dated 05.03.2013 and for consequential reliefs. The petitioner states that in that suit, by way of interlocutory order dated 22.07.2013 in I.A.No.244 of 2013, he was permitted to deposit the rents into Court without affecting

the rights of landlord and tenant. He submits that while the said suit is pending, the sealing of his medical shop was resorted to by the respondents under the panchnama referred to above.

The 3rd respondent in the counter affidavit states that the lease period of two years expired by 31.01.2013 and the petitioner was already directed to vacate the premises on expiry of the lease. However, G.O.Ms.No.54, dated 14.03.2011, is cited to claim that the hospitals were directed not to renew any existing leases, as and when current lease is expired. Accordingly, the Civil Surgeon R.M.O., Government General Hospital, Kakinada, was required to make necessary arrangement for vacation of the shop. It is stated that there is no interim injunction granted in favour of the petitioner in O.S.No.217 of 2013 restraining eviction of the petitioner. Hence, after verifying the same, as per the orders of the District Collector, the Revenue Divisional Officer, Kakinada, and his subordinates have sealed the shop. The justification mentioned at page No.4 of the counter affidavit is as follows:

“Further, it is humbly submitted that the District Collector has instructed the Revenue Divisional Officer, Kakinada, vide Note Ref.Steno/26/2016, dated 21.01.2016, duly informing that there is one private medical shop running in the hospital premises. As

Government is providing free medicines in the Government General Hospital and there is one generic medical shop run by Zilla Samakhya, there is no need for any private medical shop within the premises of Government General Hospital which otherwise can encourage unethical practices and cause financial burden to the hapless patients. As ascertained from Government General Hospital, the shop management has approached the Hon'ble Court, but there are no stay orders for eviction of that building. The District Collector further instructed to examine this case and take action for closing the shop, if otherwise not barred by orders of the Hon'ble Court.

It is also further submitted that as per the instructions of the District Collector, the Revenue Divisional Officer, Kakinada, visited along with the Commissionair, Municipal Corporation, Project Director, Housing, Civil Surgeon, R.M.O., Government General Hospital, and Tahsildar, Kakinada Urban on 27.01.2016 the medical shop i.e., Triveni Medical Shop run in the premises of Government General Hospital without permission and asked the persons who is available in the medical shop any permission or any Court orders and they submit that they have filed a petition before the Hon'ble III Additional Senior Civil Judge, Kakinada. But, there are no injunction orders. Hence, the medical shop, which is running without any valid reason/permission and without any Court orders, was seized by duly conducting panchanama."

It is evident that the petitioner is over-staying on the lease premises beyond the lease period. However, this does not permit the respondents to take possession of the premises or to seal the same, as they have to follow the

due process of law, if they want to take appropriate action including eviction of the petitioner from the shop. The sealing of the tenanted premises of the petitioner by the respondents is, therefore, clearly unauthorized and illegal and cannot be approved. However, this will not preclude the respondents from resorting to due process of law, if they seek to obtain eviction of the petitioners.

Thus, with a liberty aforesaid to the respondents, the Writ Petition is allowed. The respondents shall forthwith unseal the premises and permit the petitioner to carry on the business in the tenanted premises, subject to appropriate orders that to be passed by the appropriate Court/authority under due process of law. There shall be no order as to costs.

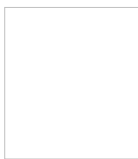
Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand dismissed.

VILAS V. AFZULPURKAR, J

10th February, 2016

Note: Furnish C.C. in three days.

(b/o)
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