

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

Writ Petition No.28965 of 2015

Dated 04th February, 2016

Between:

The Gram Panchayat, Ghatkesar, Ranga Reddy District
rep.by its Sarpanch

...Petitioner

And

The State of Telangana, rep.by its Principal Secretary, Panchayat Raj
& Rural Development Department, Secretariat Buildings, Hyderabad
and others

...Respondents

Counsel for the petitioner: Sri P.Raghavender Reddy

Counsel for respondent Nos.1 to 4: GP for Panchayat Raj

Counsel for respondent Nos.5 to 26: Sri M.A.K.Mukheed

The Court made the following:

ORDER:

Assailing Memo bearing No.7688/PTs.II/A2/2015, dated 31.08.2015, of respondent No.1, whereunder it has stayed resolution of the petitioner for enhancement of rentals as well as holding of auction for a period of six months, this writ petition is filed by the Gram Panchayat, Ghatkesar, Ranga Reddy District.

The undisputed facts of the case disclose that the petitioner has constructed 22 shops in the year 1990 and allotted the same to respondent Nos.5 to 20 on nominal rent, that shops allotted to respondent Nos.21 to 26 were put to public auction as per order passed in W.P.No.2285 of 2010 in the year 2011 and that lease in

respect thereof has also expired. That the petitioner has taken a decision in the Grama Sabha conducted on 02.10.2014 for conducting open auction and that accordingly it has addressed letter, dated 16.03.2015, to respondent No.3 requesting him to permit it to conduct open auction of the shops. After calling for the entire records, respondent No.3 directed the Gram Panchayat to conduct public auction after collecting entire outstanding dues from the occupants of the shops vide his order, dated 23.05.2015. That, on the request of the petitioner, the Divisional Panchayat Officer vide his proceedings, dated 06.07.2015, fixed the upset price for holding open auction. It is stated that the petitioner has served notices to all the private respondents who are in occupation of the shops to vacate the same and pay the arrears. Obviously, on the occupants of the shops approaching it, respondent No.1 has passed the impugned order.

The learned Government Pleader for Panchayat Raj and Sri M.A.K.Mukheed, learned counsel representing respondent Nos.5 to 26, have not disputed that grant of leases by the Gram Panchayat is governed by the Rules relating to Receipts and Expenditure of Gram Panchayats. The learned Government Pleader has fairly conceded that under these Rules, respondent No.2 is not conferred with any power or authority to interfere with the decision taken by any Gram Panchayat with regard to grant of leases or renewal of leases. Since the subject pertaining to lease is governed by a statutory regime, respondent No.1 cannot exercise its executive or administrative power in derogation of the statutory rules. Such an action would render the very purpose of framing statutory rules otiose. In this view of the matter, this Court has no hesitation to hold that the impugned Memo issued by respondent No.1 is wholly without jurisdiction and the same is in derogation of the Rules.

Sri M.A.K.Mukheed, learned counsel, however, submitted that the writ petition is not maintainable as the petitioner-Gram Panchayat is not represented by its Secretary, who is the executive authority.

In my opinion, this argument is advanced in despair. The learned counsel is unable to point out any provision under the A.P.Panchayat Raj Act, 1994 which authorises the Panchayat Secretary alone to initiate legal proceedings on behalf of the Gram Panchayat. The Panchayat Secretary being an employee, he is not expected to institute legal proceedings against the mighty Government to question its decision. The learned counsel has not disputed that the petitioner has passed a resolution for putting the shops to auction. Thus, the Sarpanch being the head of the Gram Panchayat is pursuing its cause in pursuance of its decision taken to hold public auction for grant of leasehold rights of the shops. While ordinarily, the executive authority of a Gram Panchayat is expected to institute the legal proceedings on its behalf, in the absence of a statutory bar and in exceptional situations such as the present one, the Sarpanch can also be permitted to represent the Gram Panchayat in order to further its interests. Therefore, I do not find any merit in the submission of the learned counsel for respondent Nos.5 to 26.

The learned counsel for respondent Nos.5 to 26 has submitted that the Gram Panchayat has in fact passed unanimous resolution deciding to continue the existing lessees. However, Sri P.Raghavender Reddy, learned counsel for the petitioner, has strongly opposed this submission and placed before the Court the Resolution Register in support of his submission that the Gram Panchayat has unanimously resolved to hold public auction. The issue in this writ petition is confined to whether respondent No.1 had jurisdiction to intervene with the proposed auction. Further, respondent No.3 has permitted the Gram Panchayat to hold public auction.

The learned counsel next contended that his clients may be granted reasonable time for vacating the shops.

The learned Government Pleader for Panchayat Raj submitted that in pursuance of the interim order granted by this Court, respondent No.1 issued proceedings on 19.10.2015 for implementing the said

order and on 28.01.2016, vacant possession of the shops has been taken.

In the light of these submissions, I do not find the necessity for grant of time to the private respondents as they have stated to have been evicted.

On the analysis above, the impugned Memo is set aside and the writ petition is allowed.

As a sequel to disposal of the writ petition, WP.M.P.No.37569 of 2015 and WV.MP.No.4907 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

04th February, 2016
VGB