

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 14862 of 2017

Order:

Heard learned counsel for the petitioner, learned Standing Counsel for the fifth respondent Gram Panchayat and learned counsel for the sixth respondent.

The petitioner states that he is a handicapped person belonging to Backward Community. When the fifth respondent issued auction notification on 21.03.2017 for leasing out the 14 shops/mulgies out of 16 shops/mulgies situated at Thangirala Veera Raghavaiah Shopping Complex, Avanigadda for the period from 01.04.2017 to 31.03.2020, the petitioner participated in the said auction in respect of Shop No.14. The auction was conducted on 27.03.2017 and he became the highest bidder. Pursuant to the same, the fifth respondent is supposed to handover the possession of the shops to the successful bidders on or before 01.04.2017 and when the fifth respondent did not handover the shop to the petitioner the present Writ Petition was filed.

Now a counter affidavit is filed by the fifth respondent stating that the petitioner is the successful bidder in respect of Shop No.14 and the shop has to be handed over to the petitioner on or before 01.04.2017. It is also stated that pursuant to the auction all other shops were handed over except Shop No.14 since the sixth respondent has not vacated the said shop. It is also stated that the sixth respondent approached the Gram Panchayat with a request to give some more time for vacation and also gave his consent to handover the possession to the highest bidder. In view of the same, no eviction notice was issued to the sixth respondent. However, he filed O.S.No.65 of 2017 on the file of the Principal Junior Civil Judge, Avanigadda. The sixth respondent filed a

representation on 18.09.2017 before the fifth respondent bringing it to its notice the injunction order dated 22.06.2017 passed in I.A.No.416 of 2017 in O.S.No.65 of 2017. In view of the said orders, the fifth respondent is not in a position to handover the shop to the petitioner, highest bidder. It is also stated that the sixth respondent is not the tenant of Shop No.14, but he was the successful bidder in earlier auction conducted for Shop No.15. He unauthorizedly vacated Shop No.15 and occupied Shop No.14. Thus, the sixth respondent is in unauthorized occupation of Shop No.14.

The sixth respondent filed a separate counter stating that his father erected one buddy shop and he is a barber by profession. When the President and Members of the Panchayat requested his father to remove the shop, which was situated in front of Tangirala Raghavaiah Park, and on condition that they would provide a shop on rent basis, his father accepted the proposal and removed the shop. It is his case that Shop No.14 was let out to him on payment of rent. The initial period of lease was from 01.12.2011 to 30.11.2014 on a monthly rent of Rs.1400/-. After the expiry of the said lease period, the rents were collected up to July 2015 and thereafter the rent was enhanced by Rs.100/-. The fifth respondent agreed to renew the lease for further period of three years and thus the lease would subsist till July 2018. When he came to know about the eviction by the fifth respondent, he filed O.S.No.65 of 2017 along with I.A.No.416 of 2017 and in spite of several adjournments no counter was filed by the fifth respondent. In those circumstances, the learned Principal Junior Civil Judge, Avanigadda allowed I.A.No.416 of 2017 restraining the respondents from evicting him till the disposal of the suit by order dated 22.06.2017 and the said order is subsisting. The present Writ Petition was filed without impleading him.

It is clear from the above facts that the father of the sixth respondent was given lease of shop for a period of three years and it was subsisting till 30.11.2014. Thereafter, the said lease amount of Rs.1400/- per month was collected till July 2015 and it was enhanced by Rs.100/-. The sixth respondent filed some rental receipts which did not show that he was given lease of Shop No.14. The case of the Grampanchayat is that he is a lessee of Shop No.15, but he vacated on his own and forcibly occupied Shop No.14 which was vacant. This Court carefully perused the prayer in I.A.No.416 of 2017 and it reads as follows:

“.....to grant temporary injunction restraining the respondents, their men and servants from ever interfere into the peaceful possession and enjoyment of the schedule premises by him in any manner whatsoever pending disposal of the main suit, meanwhile grant ad-interim injunction restraining the respondents, their men and servants from ever interfere into the peaceful possession and enjoyment of the schedule premises by him in any manner whatsoever pending disposal of this petition.”

The said I.A was allowed on 22.06.2017 due to absence of the counsel for the Grampanchayat. The prayer also does not refer to Shop No.14. It is also an admitted case that Shop No.14 along with other shops was put for auction of the leasehold rights and the petitioner is the successful bidder for Shop No.14.

Now, learned counsel for the sixth respondent submits that he is not aware of the said auction proceedings. This Court cannot believe such a statement. It also came on record that pursuant to the said auction, the successful bidders were given possession of all other shops except Shop No.14 in which the sixth respondent is squatting. When the sixth respondent was asked to produce the subsisting lease deed in respect of Shop No.14, he could not produce the same.

In the circumstances, the fifth respondent is directed to evict the sixth respondent and put the petitioner, successful bidder in possession of

Shop No.14. The sixth respondent is given one month time from the date of receipt of a copy of this order for vacating the shop and this will not prevent the fifth respondent from accommodating the sixth respondent in any other shop on his request.

The Writ Petition is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

Date: 26.10.2017

Note:
Issue CC in three days
(B/O)
Nsr

A. RAMALINGESWARA RAO, J

