

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.19851 OF 2017

ORDER:

This Writ Petition is filed by the petitioners with the prayer which reads as follows:-

“To issue a Writ or order or direction, more preferably in the nature of Writ of Mandamus, declaring the inaction on the part of respondent No.2 in considering the representation of the petitioners dated 04.04.2017 and 12.04.2017 and the action of the 5th respondent in issuing evicting notice dated 25.05.2017(received by the petitioners only on 14.06.2017) to put the shops of the petitioners for open auction, as highly illegal, arbitrary and unconstitutional being violative of Articles 14 and 21 of the Constitution of India besides being violative of Principles of natural doctrine of legitimate expectation and consequently direct the respondents to allow the petitioners to respective shops situated inside the Vegetable Market(east side), Sultanabad village and Mandal, Peddapalli District, in the interest of justice and pass such further or other order or orders that may deem fit and proper in the circumstances of the case.”

Heard learned counsel for the petitioners and also the learned Govt.Pleader for Panchayat Raj, representing respondents 1 to 3 and Sri G.Narendra Reddy, learned Standing Counsel offering to file vakalath for respondents 4 and 5 and for instructions and perused the material on record including earlier round of litigation covered by the order in W.P.No.1324 of 2013 dt.20.01.2017 and confirmed by the Division Bench in W.A.No.205 of 2017,dt.22.02.2017.

As per the order in the W.P.No.1324 of 2013, liberty is given to the Panchayat to conduct auction without causing sufferance to the petitioners and loss of revenue and before conducting auction, permitted the petitioners to continue to pay the arrears of rent. It also speaks from the Writ Petition averments the cost of construction of Rs.11,280/- was incurred respectively each of them

in the year 2004 for the shops constructed by them pursuant to the resolution of the Panchayat dated 13.07.2001. Even from this, the petitioner cannot seek interdicting the said auction pursuant to settled expression of the Hon'ble Single Judge confirmed by the Division Bench for which he suffered and made final any contention contra much less to seek any relief is barred by res-judicata therefrom. However, once there is a right to property protected and even a person in said possession cannot be dispossessed except through due process of law as held by the Apex Court in Rame Gowda Vs M. Varadappa Naidu¹ and even the respective orders of the Writ Petition and Writ Appeal surpa, no way speak that the Panchayat can take possession without following due process of law. The Panchayat though conducts auction, so far as the delivery of the property to the highest bidder other than any of the petitioners became highest bidders, if at all, is only through due process of law by following the provisions of Panchayat Raj and Land encroachment Act, as the case may be, any working out of the equities u/sec.51 of the Transfer of Property Act, on any improvements made by the petitioner if at all bonafide also left open.

Accordingly, the Writ Petition is disposed of. As a sequel, miscellaneous petitions if any pending in this Writ Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.22.06.2017,
b/o. vvr

¹ (2004) 1 SCC 769