

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.38 of 2017

JUDGMENT: (Per Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under clause 15 of the Letters Patent, is filed against the order passed by the learned single Judge in W.P.No.38902 of 2016 dated 15.11.2016. The appellant herein is the petitioner in W.P.No.38902 of 2016 wherein a mandamus was sought to declare the action of the Commissioner, Nagara Panchayat, Kollapur in not allotting shop No.14, in the second complex opposite the bus-stand, as arbitrary and illegal.

2. In the order under appeal, the learned single Judge noted that the petitioner claimed to be running a cool drinks shop for the last 25 years in the place belonging to the then Gram Panchayat; the Gram Panchayat had decided to construct a shopping complex in the said place; since the petitioner was running a shop for a long time, the Gram Panchayat had, by its resolution dated 13.07.2011, resolved to accept Rs.1,50,000/- from the petitioner, and allot a shop to him after the construction is completed; the petitioner had paid the amount as demanded by the Gram Panchayat, and had sought allotment of the shop; and, on the ground that the shop was not allotted inspite of the resolution of the Gram Panchayat, he had filed the writ petition.

3. The learned Single Judge observed that Kollapur village had become a Nagara Panchayat, and was governed by the Andhra Pradesh Municipalities Act, 1965 (for short "the Act") and the Rules made thereunder; the Rules

provided for allotment of shops on lease only by following due procedure, i.e. issuance of a notification calling for applications, their consideration, and then allotment; the Act and Rules did not permit allotment of shop to any person by nomination; there was no provision in the Rules for allotment by way of nomination; the resolution passed by the then Gram Panchayat was therefore not valid in law, as it was contrary to the Rules; and therefore the claim of the petitioner, for allotment of shop No.14 by way of nomination, could not be granted. The learned single Judge further held that the Nagara Panchayat should resort to the regular process of allotment and, as and when process is initiated, it is open to the petitioner to participate in such process.

4. While Sri D.L. Pandu, learned counsel for the petitioner, would contend that the respondents are estopped from now conducting auction for lease of the subject shops, as they had promised to allot the shop to the petitioner on nomination basis, the fact remains that the Act and the Rules made thereunder prohibit grant of lease of shops, belonging to the municipal bodies, except in accordance with the procedure prescribed in the Rules of conducting the auction and allotting shops to the highest bidder. There is no estoppel against a statute, and consequently the petitioner's claim of being granted allotment of the shop on nomination basis has been rightly negated by the learned Single Judge. The mere fact that the writ petition is dismissed does not preclude the petitioner from participating in the process of allotment, or for the authorities to consider his application, along with others who participate in the auction, in accordance with law.

5. Subject to the aforesaid observations, we find no error in the order of the learned single Judge necessitating interference in an intra-court appeal.
6. The appeal fails and is accordingly dismissed. No order as to costs.
7. As a sequel, miscellaneous petitions if any pending in the writ appeal stand closed.

RAMESH RANGANATHAN, ACJ

January 18, 2017
MRR

Dr. SHAMEEM AKTHER, J

