HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER
WRIT APPEAL No.91 of 2017

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

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in W.P.No.7588 of 2011 dated 21.11.2016. The appellant herein filed W.P.No.7588 of 2011 to quash the notice dated 08.02.2011 issued by the Manager, group of temples (4th respondent), as arbitrary, illegal and to direct the 4th respondent to continue the petitioner's lease, along with the building constructed by him, for a further period of 10 years on enhancement of a reasonable lease amount, or to alienate the open site on market value as on the date of the initial lease in the year 2004.

It is the case of the petitioner, as has been noted in the order under appeal, that, on 10.04.2004, the 4th respondent-temple invited applications for leasing out the vacant site admeasuring 19 feet x 12.9 feet; the petitioner participated in the auction, by paying the requisite fee; he had offered Rs.11,600/- as monthly rent for the period from 01.07.2006 to 30.06.2009; his bid was the highest; while the notification prescribed the lease period as five years, he was granted lease only for three years; on 30.05.2007, he was asked to vacate the premises; he questioned the notice of eviction in W.P.No.13997 of 2007, and initially an order of status quo was passed; his lease was continued for the remaining period of two years; and in July 2009, an order was passed for his eviction. The petitioner seeks extension of lease, on payment of the market value, for another 10 years, among others, on the ground that he had spent Rs.10 lakhs in constructing a building on the site; failure on the part of the respondents, to extend the lease for a further period of 10 years, was arbitrary and illegal; and some properties were leased out for a paltry sum of Rs.200/- per month, whereas he had paid Rs.11,600/- per month till 2004, though earlier the said property fetched only Rs.4,600/- per month.

The learned Single Judge also noted the contents of the counter-affidavit filed by the 4th respondent wherein he stated that, in terms of the Rules framed under G.O.Ms.No.866 dated 08.08.2003, all leases or licenses shall be made by way of public auction; at any rate, the initial lease, granted in favour of the petitioner, was over; the petitioner had no right to continue in the subject premises; in the notification issued by the temple on 10.04.2004, one of the conditions stipulated was that any construction raised on the subject site shall be made over to the temple; the petitioner, having agreed to the said condition, had participated in the auction, and was bound thereby; and having enjoyed the lease for a period of five years from 2004 to 2009, the petitioner was continuing in the premises by virtue of the interim order and, as on date, the plot would fetch Rs.30,000/- per month as rent in the open market.

The learned Single Judge observed that, since the original lease granted in favour of the petitioner in the year 2004 expired by 2009, there was no legal right for the petitioner to continue in the leased premises; allowing the petitioner to continue on the premises would be in violation of the Rules framed under G.O.Ms.No.866 dated 08.08.2003; no mandamus could be issued directing violation of the Rules; and there were no merits in the writ petition. However, considering the fact that the petitioner was carrying on business in the leased premises, the learned Single Judge granted him two months time for vacating the leased premises and permitted the respondents-authorities, in the meanwhile, to conduct the auction to lease out the premises in question in accordance with the Rules.

Smt. K.V. Vani, learned counsel for the petitioner, would submit that Rule 3(1) of the Rules, notified under G.O.Ms.No.866 dated 08.08.2003, confers power on the Commissioner to grant lease otherwise than by way of public auction; the petitioner had spent a sum in excess of Rs.10 lakhs for construction of the building on the vacant land leased in his favour; the authorities had failed to consider the circular memo issued on 25.10.2006, which requires fair rent to be determined, and for the lease to be extended on the basis of such fair rent; even otherwise, the time granted by the learned Single Judge of two months was hardly sufficient for the petitioner to find an alternative premises; and, as the petitioner had earlier incurred a sum in excess of Rs.10 lakhs, he was entitled as of right to continue to occupy the leased premises for a further period of 10 years.

It is not in dispute that the petitioner was granted a lease pursuant to the auction held in the year 2004, and the lease period stipulated in the notification was 5 years. While the validity of the decision of the 4th respondent in the year 2007, to have the petitioner evicted from the premises, is debatable, the fact remains that the petitioner continued to be in occupation of the leased premises for the entire period of 5 years till the year 2009. The attempt of the 4th respondent to have him evicted from the premises in the year 2009, resulted in the petitioner filing the present writ petition, and in an interim order being passed for him to be continued in the subject premises, albeit at a higher rent. The petitioner's claim of having spent a sum in excess of Rs.10 lakhs is of no consequence as the very notification, pursuant to which the petitioner participated in the auction held in the year 2004, specified that any construction raised on the vacant land must be handed over to the temple on completion of the lease period. It is not as if the petitioner was unaware of the conditions of auction, or that he would be required to hand over the building, if any, constructed by him to the temple on completion of the lease period. The expenditure incurred by the petitioner for construction of the building would not necessitate his being granted extension of lease.

In exercise of the powers conferred by Section 82 read with Section 153 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, the Governor of Andhra Pradesh made the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Right (other than Agricultural Lands) Leases and Licenses Rules, 2003 (hereinafter called "2003 Rules") which were notified in G.O.Ms.No.866 Revenue Department dated 08.08.2003. Rule 2(C) of the 2003 Rules defines "executive authority" to mean the Executive Officer, Board of Trustees, Managing Trustees, or any person who is lawfully managing the affairs of an institution or an endowment. Rule 3 requires all leases and licenses to be made by way of public auction. Sub-rule (1) thereof enables the Commissioner, on a request made in writing by the Executive Authority, to permit lease of any property or right otherwise than by way of public auction and if he is satisfied, for reasons to be recorded in writing, that the interest of the institution or endowment will not suffer thereby, he may grant permission to such Executive Authority to grant a lease otherwise than by way of public auction. The ingredients of Rule 3(1) are as follows:

1. It enables the Commissioner, on a request made to him in writing by the Executive Authority, to permit lease of any property or right otherwise than by way of public auction;

2. If he is satisfied, that too for reasons to be recorded in writing, that the institution or endowment will not suffer thereby, he may grant permission to such Executive Authority to grant lease otherwise than by way of public auction.

As noted hereinabove, Rule 2 (c) defines an Executive Authority to mean Executive Officer, Board of Trustees, Managing Trustee or any person who is lawfully managing the affairs of an institution or endowment. It is only when the executive authority (in the present case, the 4th respondent) requests the Commissioner to grant him permission to lease the property of the temple otherwise than by way of public auction, is the Commissioner entitled to consider such a request, and grant permission. The power of the Commissioner to permit grant of lease otherwise than by way of public auction, even in such cases, is not unfettered. The Commissioner must not only satisfy himself that the interest of the institution would not suffer thereby, but he must also record reasons for his being so satisfied. It is not even the petitioner's case that the 4th respondent had requested the Commissioner for grant of permission to lease out the temple property otherwise than by way of public auction. Rule 3(1) does not confer any right on the lessee to claim that the temple land should be leased out to him, otherwise than by way of public auction.

Reliance placed by the Learned Counsel for the petitioner on the circular dated 25.10.2006 is also misplaced. All that the said Circular stipulates is for the Executive Authority to first have the fair rent of the building determined by the fair rent committee, before submitting his proposal to the Commissioner for grant of permission to lease the subject premises otherwise than by way of public auction. The circular dated 25.10.2006 restricts the power of the Executive Officers to request the Commissioner, Endowments to permit him to grant lease otherwise than by way of public auction. Even in cases where the Executive Authority is of the view that the property of a temple should be leased out otherwise than by way of public auction, he is, in the first instance, required to have the lease rent assessed by the fair rent committee in the District; and only, thereafter, send proposals to the Commissioner for grant of permission. As indicated hereinabove, no proposals have been sent by the 4th respondent to the Commissioner for grant of permission to lease out the property otherwise than by way of public auction. As no such proposal has emanated from the 4th respondent, the question of his having failed to adhere to the circular dated 25.10.2006, before making a proposal to the Commissioner, does not arise.

The only other contention urged by Smt. K.V. Vani, learned counsel for the petitioner, is that the time of two months granted by the learned Single Judge is hardly sufficient for the petitioner to make alternative arrangements. While the lease granted in favour of the petitioner was only for three years which expired in 2007 and, even in terms of the notification, the lease period of five years expired in the year 2009, the petitioner has continued to remain in illegal occupation of temple land, under the protection of the interim orders passed by this Court, for the last more than 7 years. Yet, he complains that the time granted by the learned Single Judge of two months is inadequate. We are satisfied that the learned Single Judge has not erred in granting the petitioner two months time to vacate the premises. However, as the two months period is due to expire on 21.01.2017, in case the petitioner submits an affidavit to the 4th respondent, unconditionally undertaking to vacate the premises on or before 28.02.2017, the 4th respondent may consider refraining from taking coercive action to evict the petitioner from the subject premises. In case no such affidavit of undertaking is submitted by the petitioner on or before 21.01.2017, it is open to the 4th respondent to have the petitioner evicted from the subject lands on any day after 21.01.2017. In case the petitioner submits the undertaking as aforesaid, he shall voluntarily and unconditionally vacate the subject premises, in terms of the undertaking, latest by 28.02.2017.

Subject to the aforesaid observations, we find no error in the order of the learned Single Judge necessitating interference in an intra-court appeal. As the writ appeal necessitates dismissal for the aforesaid reasons, it is wholly unnecessary for us to consider the submission of Sri A.Sreekanth Reddy, learned Standing Counsel for Endowments, that the 2003 Rules have been subsequently amended by G.O.Ms.No.426 dated 09.11.2015.

The Writ Appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the writ appeal stand closed.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

January 18, 2017
MRR