

THE HON'BLE SRI JUSTICE S. V. BHATT

WRIT PETITION No. 24004 of 2012

ORDER:

Heard Sri Kasa Jaganmohan Reddy, for Petitioners, the Assistant Government Pleader (Panchayat Raj) for Respondent Nos. 1 to 3, and Mr.G.Sheshadri for Respondent No.4.

2. The petitioners challenge communication in Rc.No.349/ 2011/ A6(P), dt.28.04.2012 of 2nd Respondent and consequential proposal of 4th Respondent in Rc.No.16/ 2012/ A2, dt. 23.07.2012 in respect of Stall Nos.12 & 17 to 21 to fix upset price, as illegal, arbitrary, unconstitutional and contrary to Rule 12(2) of G.O.Ms.No.496, P.R., dt. 11.06.1966.

3. The circumstances relevant for the disposal of the writ petition are as follows:

The shopping complex at Uravakonda consists of 17 stalls in a row, all along the road at Uravakonda Bus-stand. The petitioners claim possession of Shop Nos.12, 17 to 21 under lease granted by 4th Respondent about ten years ago. According to petitioners, the lease has been renewed from time to time on enhancement of rent. The petitioners claim to be doing petty business in these stalls. The last renewed lease in favour of petitioners came to end by 31.05.2012. The petitioners claim to have given representation

to extend the lease, firstly on the ground that the petitioners' livelihood is dependant on the business done in the stalls, and secondly, their cases can be considered in terms of G.O.Ms.No.496, P.R., dated 11.06.1966. The lessees filed W.P.No.1185 of 2012, when a proposal to conduct open auction was mooted without considering their requests for renewal of lease, and the W.P., was disposed of by this Court on 29.01.2012 directing the Respondents to consider the representations of the lessees in accordance with the procedure prescribed in this behalf.

The petitioners claim the right for renewal of lease by relying upon the proviso to Rule 12(2) of G.O.Ms.No.496, dt.11.06.1966. It is alleged that the 2nd Respondent passed orders in Rc.No.1209/2011/ A6(P), dt.11.05.2011, dispensing with the auction in respect of one shop (Canteen) by enhancing rent by 33% over the existing rent. These details are stated to complain that the Respondents are not treating lessees equally. Therefore, the petitioners contend that issuing the impugned proceeding dt.28.04.2012, without considering their representation for renewal of lease at enhanced rent is illegal and arbitrary.

Thus, the definite case of the petitioners is that the Respondents are discriminating similarly situated lessees, which is untenable and unconstitutional. Having been left with no option, the present writ petition, for the relief referred to above, is filed.

4. The 3rd Respondent/ District Panchayath Officer, Ananthapur filed counter-affidavit and states that there are 17 stalls in the Panchayat Raj shopping complex at Uravakonda. These shops were let out in the year 2003 and renewed from time to time on agreed enhanced rent between the parties. The 2nd Respondent, on 28.04.2012 directed 4th Respondent to let out the stalls by way of public auction. The 3rd Respondent, while dealing with the allegation of not considering the direction of this Court in W.P.No.1185 of 2012, replies that the petitioners herein are not the petitioners in W.P.No.1185 of 2012. According to 3rd Respondent, the petitioners in W.P.No.1185 of 2012 are lessees of Shop-Room Nos.1 to 9. The 3rd Respondent further alleges that the petitioners are continuing in possession of subject shops from 2003 onwards and on account of continuing the lease on enhanced rent instead of public auction, the Gram Panchayat is suffering heavy financial loss. If the petitioners are really interested to run the business, the petitioners can participate in the open auction along with other public.

Adverting to discrimination referred to in the affidavit, the 3rd Respondent replies that the extension of lease granted through proceedings dt. 11.05.2011 to one Shop-room (Canteen) also expired by 09.02.2014, and that the said lessee is continuing in the

said shop without vacating the same. The 3rd Respondent prays for dismissing the writ petition.

5. The 4th Respondent/ Panchayat Secretary filed counter-affidavit stating that the 2nd Respondent through Proceedings dated 29.04.2012 directed the authorities to fix upset price as the period for which the leases were granted have since expired. He submits that the petitioners, after expiry of lease period, made representations to the 2nd Respondent/ District Collector, as the 2nd Respondent is the competent authority to consider the request for extending the lease under proviso to Rule 12(2) of G.O.Ms.No.496, dt.11.06.1966. According to 4th Respondent, the villagers have represented to conduct open auction to enable them to participate in the open auction, and the 4th respondent forwarded the representation to the District Collector for necessary orders. According to 4th Respondent, the 2nd Respondent having regard to the request from villagers, has taken the decision, as communicated through letter dt. 29.04.2012. According to 4th Respondent, the petitioners are not, as a matter of right, entitled for perpetual lease. It is further stated that the actions of the Respondents do not violate either statutory or fundamental rights of petitioners and prays for dismissing the writ petition.

6. Mr.Jaganmohan Reddy, appearing for petitioners, vehemently contends that the 2nd Respondent is not exercising the

authority and discretion conferred on him by Rule 12(2) of G.O.Ms.No.496. According to him, the Rules have been made conferring discretion and authority on the 2nd Respondent to take decision on case to case basis. A decision can be said to have been taken on case to case basis, if only, the 2nd Respondent, firstly considers the request/representation of petitioners, examines the advantages and disadvantages, either in renewing the lease or directing to conduct open auction. In the case on hand, by referring to extension of lease in favour of one Shop Room (Canteen), he contends that similar treatment should be given to petitioners as well. As, without considering the representation of the petitioners, the proceeding dt. 28.04.2012 is forwarded, the same is liable to be set aside, and the 2nd Respondent may be directed to exercise his discretion under Rule 12(2) of G.O.Ms.No.496, dt.11.6.1966.

7. Mr.Sheshadri, appearing for Respondent No.4, stoutly opposes the writ prayer by contending that the petitioners are expecting perpetual lease of property belonging to the Gram Panchayat without paying market rent to Gram Panchayat. The petitioners were inducted into possession in the year 2003. The 4th Respondent has been from time to time implementing the directions issued by the 2nd Respondent. On the communication dt. 28.04.2012, he submits that the representation received from

villagers to conduct open auction was forwarded to 2nd respondent, and the 2nd Respondent, after taking note of request of the villagers, has in fact, exercised the discretion and authority vested in him, and issued proceedings dated 28.04.2012. Therefore, according to the learned counsel, for all purposes, it shall be treated that the requirement of the proviso is also complied with by the 2nd Respondent, and no exception can be taken to the Proceedings dt. 28.04.2012. Though, he appears for 4th Respondent, he submits that the extension granted in favour of a single shop-room (Canteen) is unsustainable and over by 09.02.2014 and according to the instructions received by him on 22.12.2016, he submits that the 4th Respondent is proceeding to conduct auction of all the stalls at the subject shopping-complex, as per Rules. In other words, he submits that the 4th Respondent is interested in conducting open auction to all shop-rooms held by the Gram Panchayat, and as such, prays for dismissing the writ petition.

8. I have perused the pleadings, the material available on record and taken note of the submissions of the learned counsel appearing for parties.

9. Now, the point for consideration is 'whether the proceedings of the District Collector in Rc.No.349/ 2011/ A6(P), dated

28.04.2012 and the Communication dated 23.07.2012 of 4th Respondent are valid and tenable'.

10. For brevity I am not proposing to reiterate either the pleadings or the contentions of the learned counsel appearing for the parties. Briefly stated, the petitioners rest their claim on Rule 12(2) of G.O.Ms.No.496 PR., dt.11.06.1966, and the discrimination shown in the matter of granting renewal to the lessees in the same shopping complex. The Government Order vide G.O.Ms.No.496 dated 11.06.1966 relates to the Rules and Notifications issued under the A.P. Panchayat Raj Act. Rule 12(2) of the G.O., reads thus:

“12.(2) Leases of buildings and lands belonging to Gram Panchayat shall be effected by public auction which shall be conducted by the executive authority or by a person duly authorized by him who shall give full publicity thereto in such manner as he considers suitable. The bids at the auction shall be placed by the executive authority before the gram panchayat which determines which of the bids should be accepted. Where the bid accepted is not the highest bid, the reasons for rejecting a bid or bids higher than the one accepted shall be recorded in writing.

Provided that in the case of lease of land and buildings when it is advantageous to renew the lease in favour of the person to whom it was originally granted, the gram panchayat may, with the previous sanction of the District Collector, dispense with public auction.

Provided further that the Gram Panchayat may dispense with public auction in regard to the sale of usufruct of the trees

situated in the localities inhabited by Scheduled Castes/ Scheduled Tribes and permit the scheduled castes/ scheduled tribes families residing in the locality to enjoy the said usufruct on payment of an amount of Rs.30/- per tree per annum to the Gram Panchayat. The usufruct so derived in the area should be utilized for the welfare of the Scheduled Castes/ Scheduled Tribes community in the village.

11. Rule 12 (1) deals with sale of the produce of usufruct of trees, wind fallen and withered trees etc. Rule 12(2) deals with lease of buildings and lands belonging to Gram Panchayat. According to sub-rule(2) of Rule 12, leases of buildings and lands shall be effected by public auction, conducted by the executive authority, after giving full publicity in such manner as he considers suitable. The bids received at the public auction shall be placed by the executive authority before the Gram Panchayat for confirmation or acceptance. The sub-rule further grants discretion to Gram Panchayat to record reasons for rejecting a bid higher than the one accepted. Proviso to sub-rule (2) enables the Gram Panchayat to renew the lease in favour of the existing lessee with the previous sanction of the District Collector, when it is advantageous to renew the lease. Therefore, the conditions for granting renewal of lease are, firstly, it is advantageous to the Gram Panchayat and prior sanction from the District Collector is obtained. Let us test the requirements of the proviso in the facts of this case.

12. The petitioners were put in possession of the subject matter in the year 2003. Either on the request of the petitioners or on being satisfied that it is advantageous to Gram Panchayat, lease of the petitioners have been renewed from time to time. The lease in favour of petitioners stood expired by 2012. The 4th Respondent forwarded the representation of the villagers to the 2nd Respondent for a decision under Rule 12, Sub-rule (2) of the G.O. The 2nd Respondent, keeping in view the directions issued by this Court in W.P.No.1185 of 2012, directed the 4th Respondent to confer leasehold rights by conducting public auction. A bare reading of the Proceeding dated 28.04.2012 is sufficient to conclude that the 2nd Respondent, in fact, has exercised his discretion and thereafter directed the 4th Respondent to conduct public auction for conferring leasehold rights of the shop-rooms at Uravakonda. The grievance of the petitioners is that their representation is not considered before issuing the proceeding dated 28.04.2012 and communicated to 4th Respondent. In the considered view of this Court, the petitioners cannot succeed on this point, as the representation marked as Ex.P.3 does not show the date on which it was forwarded to 2nd respondent or 4th Respondent. Therefore, the ground of non-consideration of their representation, before a decision is taken by the Respondents, is not available to the petitioners. On the other hand, the reply of 4th Respondent has bearing on the complaint of petitioners for he subtly says that

after expiry of lease, representation is made by the petitioners. Be that as it may, this Court need not further consider the circumstances and record a finding on this aspect of an ancillary circumstance. The other circumstances, which have bearing in 2012, are also not available with the passage of time for exercising authority to extend the lease. The Respondents are expected to act uniformly in the matter of conferring or renewing the lease. In the case on hand, admittedly, the Respondents have taken decision to renew the lease of shop let out to run a canteen. But the Respondents are not offering any explanation for not renewing the lease of the petitioners. The circumstance that comes in favour of the lessee of Shop-room (canteen) is that the lease is expired by February, 2014. Since the extension of lease granted in favour of the Hotel is also expired, by referring to that circumstance, I am not inclined to grant any further relief in this writ petition to petitioners, as four years period from the date of filing writ petition is over.

13. Apart from the above, the statement of the Standing Counsel is placed on record that the lease of all the shops of Gram Panchayat at Uravakonda will be conferred in the public auction in accordance with Rules and regulations only. The writ prayer fails.

14. Accordingly, the writ petition is dismissed. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

January 25, 2017
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THE HON'BLE SRI JUSTICE S. V. BHATT



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