

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition no.8582 of 2016

ORDER:

This writ petition, under Article 226 of the constitution of India, is filed seeking verbatim the following relief:

“..to issue any writ or direction more particularly one in the nature of Writ of Mandamus declaring the auction notice dated 29-02-2016 issued by the 4th respondent seeking to auction shop Nos.11, 11A and 11B without evicting me from the said shop by following due process of law as illegal, arbitrary and consequently set aside the auction notice issued by the 4th respondent and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri K.Raja Reddy*, learned counsel appearing for the writ petitioner; learned Government Pleader for Endowments (AP) appearing for respondents 1 to 3; *Smt. K.Lalitha*, learned Standing Counsel appearing for the 4th respondent; and, of *Sri T.S.Rayalu*, learned counsel appearing for the 5th respondent. I have perused the material record.

2.1 At the outset, it is to be noted that the sole writ petitioner died during the pendency of the writ petition; and, therefore, the son of the deceased sole writ petitioner, is brought on record as the 2nd petitioner, *vide* order, dated 09.08.2018, in W.P.M.P.no.31739 of 2017. On the even date, the highest bidder in the auction conducted pursuant to interim orders, dated 16.03.2016, of this Court has been impleaded as 5th respondent in the writ petition, as per the orders in W.P.M.P.No.34443 of 2017.

3. When the vacate stay petition filed by the 4th respondent institution and the 5th respondent came up for consideration, a joint request is made that instead of the vacate stay petitions, the writ petition may be heard and disposed of on its merit.

4. The case of the 1st writ petitioner (since died) is this:

The writ petitioner is a lessee of shop nos.11, 11A and 11B belonging to the 4th respondent-Guntur Annadana Samajam (hereinafter referred to as 'the 4th respondent'). Originally, the then Manager of the 4th respondent decided to auction the leasehold rights, for a period of three years, in respect of 67.88 square yards of site belonging to the 4th respondent. He accordingly issued a notice, dated 30.12.2006, calling the public to bid at the auction to be held on 10.01.2007 at 9 AM. As per the auction conditions, the successful bidder has to construct shop with his funds and carry on business without sub-leasing or transferring the leasehold rights. The writ petitioner having participated in the auction held, on 10.01.2007, became the highest bidder. The bid/lease amount for the site was Rs.3,600/- per month. The writ petitioner having complied with all the conditions carried on the business by constructing shops in the leasehold site. After the expiry of the lease period, he sought for renewal of the lease by agreeing to pay enhanced rent by enhancing the existing rent by @33%. He later paid rent @Rs.4,500/- per month. However, he was asked to pay enhanced rent by enhancing rent by 40%. He agreed for the same and paid the said rent at the said rate, that is, @ Rs.6,300/- per month. There are no arrears of rent. When the lease period is about to conclude, the petitioner made a representation, dated 22.12.2015, seeking renewal of the lease for a further period of three years agreeing to pay rent at 40% over and above the rent he was paying by then. However, there was no response to the said representation. While so, the 4th respondent issued a notification, dated 29.02.2016, to auction the leasehold rights of the shops belonging to it. In the said notification, the subject shops of the petitioner were also shown at serial no.5, and it was stated that the auction is held as per the orders of the 3rd respondent in Pc.No.A4/ 2997/ 15, dated 10.07.2015. On enquiries, the petitioner came to know that there is no approval for the lease entered into by him at any point of time. No objection was raised for the

petitioner continuing as a lessee on the basis of payment of enhanced rents. However, the present auction proceedings were issued by including the subject shops of the writ petitioner along with five other shops, without following the due process of law and on the ground that there is no approval from the authority concerned for the lease of the petitioner. Initially, the petitioner participated in the public auction and became a successful bidder and was allowed to continue his business in the subject shops by paying rents at the enhanced rates, that is, @33% and @40%. Now, a fresh auction is being sought to be held on the ground that the lease of the petitioner has no approval at any point of time. When the lease has no approval, the question of accepting the bid, receiving the rents and allowing the petitioner to raise constructions does not arise. The proceedings, dated 16.04.2014, of the 3rd respondent in Lr.Pc.No.A/ 8994/ 2012, belie the contention of the respondents 3 & 4 that he is not a lessee of the property. The petitioner cannot be evicted and thrown out by conducting public auction and creating third party interest. Therefore, the proposal of public auction and the auction sought to be held with regard to shop nos.11, 11A and 11B shown at S.no.5 of the auction notice is to be set aside being illegal and arbitrary. Hence, the writ petition is filed.

5. On 16.03.2016, while ordering notice before admission, this Court, granted the following interim order:

‘Meanwhile, the auction may go on. However, finalization of the auction proceedings and confirmation of the lease in favour of the highest bidder shall be subject to the further orders to be passed by this Court in the Writ Petition in terms of the orders of the Division Bench in WA No.447 of 2015, dated 14.10.2015.’

6. The 4th respondent filed WMP 1485 of 2016 requesting to vacate the aforesaid order. Be that as it may, in the auction held, on 28.03.2016, pursuant to the above said interim orders of this Court, the impleaded 5th respondent became the successful bidder in respect of the subject property as his bid @ Rs.35,000/- per month is the highest bid. On becoming the highest

bidder, the 5th respondent also filed a vacate petition *inter alia* stating that as per the auction held pursuant to the interim orders of this Court and the conditions of auction, he is entitled to be put in possession of the subject property and shops and that he is prepared to pay the rent @ Rs.35,000/- per month.

7. The case of the 4th respondent is this:

The 4th respondent institution is re-classified under Section 6(b)(i) of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (Act 30 of 1987) [hereinafter referred to as 'Act 30 of 1987']. It is under the administrative control of the Deputy Commissioner, Endowment Department, Guntur, the 3rd respondent herein. In the first instance, the leasehold rights in respect of the vacant site of 67.88 square yards covered by T.S.no.516 and 238 bearing Door no.4-13-69 at Amaravathi Road, Guntur Town and District, were put to public auction, on 10.01.2007; and, the 1st writ petitioner became the highest bidder on payment of monthly rent of Rs.3,600/- for a period of three years, that is, from 2007-08 to 2009-10, subject to the condition that he shall construct temporary shop at his expenses after duly obtaining necessary permissions from the Municipality etcetera; however, as per the conditions nos.3 & 4 of the auction notice, after the completion of the lease period, the possession of the property with the said shop/s shall be delivered to the authorities of the institution on 'as is where is basis', Accordingly, the writ petitioner constructed three shops in the said vacant site, that is, shop nos.11, 11A and 11B by treating them as one shop. Thus, the writ petitioner was a tenant of the vacant site and the shops, i.e., the subsequently raised temporary sheds thereon. Therefore, as per the auction conditions, he has to deliver possession of the property with the said shops to the 4th respondent institution, after expiry of the period of lease. There is no extension of the lease in favour of the petitioner as required under the provisions of Section 82 of Act 30 of 1987. The 3rd respondent, rejected the

request of the petitioner for renewal of the lease, vide Rc.No.A4/ 1159/ 2016, dated 14.03.2016. When the petitioner refused to receive the said proceedings, the same were affixed on the subject shops. Hence, the petitioner has no subsisting legal right to continue in the subject shops and the writ petition is liable to be dismissed. The lease period of the 1st writ petitioner/sitting tenant had already expired by 2009-2010; and, thereafter, there is no renewal of lease in his favour by the competent authority. He was treated as an encroacher and the rent that is being collected is only towards the damages for use and occupation. Hence, the leasehold rights of the subject shops have been put to public auction after following the rules and as per the procedure established by law. In similar circumstances, in a batch of writ petitions filed by one Alavala Naga Malleswari & others in W.P.no.18210 of 2009 & batch, and in W.P.No.14190 of 2010 filed by one Nukala Satyanarayana, this Court, by orders, dated 24.06.2015, while dismissing the said writ petitions, observed that there is no error in the orders passed by the 1st respondent therein on the petitions filed under Section 83 of Act 30 of 1987, when admittedly, the leases of the petitioners therein are not in existence. The procedure for leasing out the shops in question has been followed strictly in accordance with Rule 82 of the Act 30 of 1987. Notices have been issued to the writ petitioner, on 04.10.2013, 15.07.2014, 26.03.2015 and on 28.12.2015, to vacate the premises and deliver vacant possession of the subject shops within fifteen days from the date of receipt of the said notices. Thus, it is clear that though prior notices were issued well in advance i.e., before the auction that was proposed, on 28.03.2016, the writ petitioner, having received the notices, did not comply with demands in the said notices; therefore, the leasehold rights of the subject property were put to auction, on 28.03.2016, by following the relevant lease rules & procedure and pursuant to the orders of this Court, dated 16.03.2016; and, one S.Srinivas/ the impleaded 5th respondent became the highest bidder and the lessee on payment of a monthly rent of

Rs.35,000/- as against the previous rent of Rs.6,300/- per month. Thus, due to public auction of the shops in question, there has been considerable increase of lease amount to a tune of Rs.28,700/- per month; and the same is beneficial to the 4th respondent institution. Apart from these facts, Rule 3 of the Rules clearly envisages that the leasehold rights have to be given by way of public auction for a period of three years; and, that if the lease period is above three years or above eleven years, necessary permission has to be obtained from the Commissioner or the Government, as the case may be. In the case on hand, the request for renewal is already rejected. Therefore, the petitioner has no other option but to vacate the subject shops and hand over possession of the same to the 4th respondent. Therefore, the writ petition needs no consideration. The interim order has to be vacated. The writ petition is liable to be dismissed.

8. Learned counsel for the 2nd writ petitioner contended as follows: 'He is the son of the first writ petitioner, who is the original lessee. The deceased first writ petitioner having become a successful bidder of the leasehold rights of the vacant site for the period from 2007-08 to 2009-10 on payment of monthly rent of Rs.3,600/- per month had constructed sheds, i.e., the three subject shops and started carrying on his business, which is the livelihood for him and his family. The lease period was extended, on the 1st writ petitioner agreeing to pay enhanced rent of Rs.4,500/-. On his request, the lease period was further extended on agreeing to pay enhanced rent above 40% of the then existing rent, that is, on payment of rent @ Rs.6,300/- per month. As on the date of the writ petition, he is paying the said rent. On the ground that the lease has no approval, the impugned order was passed and the auction notice for public auction of the leasehold rights of the subject shops was issued by the 4th respondent, however, without considering the representation of the writ petitioner. Hence, the present writ petition is filed questioning the said actions as illegal, arbitrary and contrary to law & procedure. The sole writ

petitioner died. His son, who is impleaded as 2nd writ petitioner, is prepared to pay the present auction amount of Rs.35,000/- per month and therefore, he may be continued as a lessee in the subject shops on such payment. The 5th respondent, who became a bidder, during the pendency of the writ petition, is not entitled to have possession of the property till the petitioner is evicted as per procedure established by law. Hence, the writ petition may be allowed.'

9. Learned counsel for the impleaded 5th respondent submitted as follows: 'The sole writ petitioner, who is the original lessee, died. His son, the 2nd writ petitioner, is illegally continuing in possession of the property though the term of lease of his father has come to end long time back and his father is an encroacher. Under law, any person, who continues in the leasehold premises after the term of lease, is an encroacher. The leasehold rights are not heritable. Neither the sole writ petitioner nor his son are entitled to any equitable relief as their respective possessions were and are illegal. The public auction in which this respondent has become a successful bidder for an amount of Rs.35,000/- per month was held as per the interim orders of this Court. Neither the deceased writ petitioner nor the 2nd writ petitioner challenged the interim order by filing a writ appeal. The institution, which is bound by the interim order, held the public auction of leasehold rights as per the said orders of this Court. Therefore, this respondent is entitled to enjoy the leasehold rights as per the public auction held as per procedure, pursuant to the orders of this Court. Hence, the 2nd writ petitioner cannot object for delivery of possession of the subject property with the shops to this respondent. This respondent is not able to carry on business by taking possession of the subject property despite becoming a successful bidder in the auction held on 28.03.2016.'

10. Learned Government Pleader, Endowments, appearing for respondents 1 to 3 and the learned Standing Counsel for the 4th respondent while reiterating

the case pleaded in the counter of the 4th respondent stated that the parties are bound by the interim order of this Court and that in the auction held as per procedure and as per the interim orders of this Court, the 5th respondent became a successful bidder and has consequently become entitled to have possession of the subject property and that, therefore, the 2nd writ petitioner is liable to vacate the subject property to enable the 4th respondent institution to deliver possession of the shops to the 5th respondent-successful bidder, who has quoted a bid amount of Rs.35,000/-, which is considerably a substantial amount and which is Rs.28,700/- more than the amount of Rs.6,300/- being paid by the 2nd writ petitioner, who is an encroacher and, who is not entitled to continue in possession of the property any longer causing loss of revenue to the 4th respondent institution.

11. I have given earnest consideration to the facts and submissions.

12. The initial lease period of three years of the sole/ 1st writ petitioner in respect of the subject property came to an end in the year 2009-2010. There is no registered lease in favour of the said writ petitioner. Though the 1st writ petitioner continued in the leasehold property by paying enhanced amounts, there are no orders from the competent authority approving the extended terms of lease/s. Under A.P Charitable & Hindu Religious Institutions & Endowments Immovable Properties and Other Rights (Other Than Agricultural Lands) Leases and Licences Rules, 2003, no lease shall be valid unless the lease is approved by the competent authority. Even assuming that the extended lease periods are valid, the said extended periods have also come to an end. In the absence of any existing lease period, much less, a lease approved by the competent authority, the person continuing in possession of institutions' property becomes an encroacher. Nonetheless, the 2nd writ petitioner, who is the son of the deceased 1st writ petitioner, who has no subsisting term of lease, is continuing illegally and unauthorisedly in possession of the subject property.

Therefore, the 2nd writ petitioner's possession of the subject property with shops is not legal as per settled legal position and he has no right whatsoever to continue in possession of the same.

13. In this context, it is profitable to refer to Section 83 of Act 30 of 1987, which reads as under:

“Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers:

(1) Where the Assistant Commissioner having jurisdiction, either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this Chapter referred to as ‘encroacher’) any land, building tank, well, spring or water-course or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act the Assistant Commissioner shall report the fact together with relevant particulars to the (Endowments Tribunal) having jurisdiction over the division in which the institution or endowment is situated

Explanation:- For the purpose of this Chapter, the expression ‘encroacher’ shall mean any person who unauthorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it.

(2) Where, on a perusal of the report received by him under sub-section (1), the Endowment Tribunal finds that there is a prima facie case of encroachment, it shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified in the notice should not be made. A copy of the notice shall be sent to the trustee of the institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Whereafter considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such enquiry as may be prescribed, the Endowment Tribunal is satisfied that there has been an encroachment,

it may, by order, require the encroacher to remove the encroachment and deliver possession of the land or, building or space encroached upon to the trustee before the date specified in such order”.

(5) The order of the Endowment Tribunal under subsection (4) shall be in writing and shall contain the grounds on which he has passed the order.

(6) During the pendency of the proceedings, the Endowment Tribunal shall order the encroacher to deposit such amount as may be specified by it in consideration of the use and occupation of the properties in question in the manner prescribed.”

As rightly contended, as per the provisions of the Act 30 of 1987 and the relevant Rules referred to supra, the 2nd writ petitioner is not entitled for grant of extension of lease or fresh lease in respect of the subject property by private negotiations or by any arrangement contrary to the procedure established by law. The Endowments Department is entitled to and is obligated to hold public auction for lease of the subject property and shall put the successful bidder in possession of the subject property, as per the procedure established by law after taking possession of the same from the 2nd writ petitioner, who is in unauthorised possession of the same as the said Rules postulate that all leases or licenses shall be made by way of Tender-cum-Public Auction on annual advance rental basis. Thus, it is well settled law and it is not in dispute that the Commissioner or the Regional Joint Commissioner or the Joint Commissioner of Endowments are not having powers to grant lease in respect of any endowed property otherwise than by a tender-cum-public auction. This Court, in a common Order, dated 08.06.2010, passed in W.P.Nos.12674, 12686, 12691 of 2010 (unreported), having referred to the precedents and the provisions of law, which are relevant, held that the persons, who continue to remain in illegal occupation of the property belonging to a charitable trust, cannot be heard to contend that, though they continue to remain in illegal occupation, the respondents can only have them evicted in accordance with the summary procedure prescribed under Section 83 of Act 30 of 1987. Had the 1st writ petitioner and later, on his death, the 2nd writ

petitioner vacated the property on the expiry of the term of lease, the 4th respondent would have auctioned the leasehold rights of the subject shops long time back and the institution would have been in a position to realise the prevailing rent in the vicinity since a long time back. Further, even after an auction was held pursuant to the interim orders of this Court, the 4th respondent institution is not able to realise rent @ Rs.35,000/- per month, which is the highest bid amount offered by the 5th respondent successful bidder, as the 2nd writ petitioner, who is an encroacher is continuing in possession of the property unauthorisedly and without any subsisting lease. Therefore, on account of the conduct of the 1st writ petitioner and subsequently of the 2nd writ petitioner, the 5th respondent already suffered monetary loss. Having regard to the facts & submissions, this Court finds that the said situation resulting in loss to the 4th respondent institution shall not be allowed to continue any further, in view of the public interest and the interests of the charitable institution and also the fact that leasehold rights are already auctioned pursuant to the interim orders of this Court.

14. In the light of the facts and the legal position obtaining, the 2nd writ petitioner's contention that, even if he is to be held to be an encroacher under Section 83 of Act no.30 of 1987, this Court should direct the respondents 1 to 3 to act strictly in accordance with the procedure prescribed under the Act is a contention only to be noted to be rejected as this Court would not be justified in showing indulgence to the person like the said petitioner who is an encroacher of the subject property of the 4th respondent institution. This is more particularly so, as in the case on hand there is already an interim order permitting the 4th respondent to go ahead with the auction and that accordingly, the 4th respondent conducted the auction and that in the said auction, the 5th respondent has become a successful bidder and has consequently become entitled to have possession of the subject property and enjoy the leasehold rights as per the notified auction conditions.

15. On the above analysis of the facts & circumstances of the instant case & the legal position obtaining and for the reasons afore-stated, this Court finds no reason to exercise the discretion under Article 226 of the Constitution of India in favour of the 2nd writ petitioner.

16. In the result, the Writ Petition is dismissed, however, without costs. As a sequel, the 2nd writ petitioner is directed to deliver vacant possession of the subject property with shops peacefully to the 4th respondent institution forthwith and in any event within two weeks from the date of receipt of a copy of this order. On failure to do so, the 4th respondent shall obtain delivery of possession of the subject property (with shops) from the 2nd writ petitioner, if necessary, with the assistance of police concerned, by invoking the relevant provisions of Sections 84 & 96 of Act 30 of 1987; and, thereafter, by following the procedure established by law, deliver possession of the same to the 5th respondent, who became a successful bidder in the auction that was held pursuant to the interim orders of this Court.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

20.08.2018
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