HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

WRIT APPEAL Nos.421, 422, 423 and 424 of 2018

COMMON ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

These Writ Appeals are preferred against the common order passed by the learned Single Judge in W.P.No.38990 of 2017 and batch dated 29.01.2018.

The appellants herein invoked the jurisdiction of this Court seeking a writ of mandamus to declare the tender-cum-public auction notice dated 04.11.2017 issued by the Mandal Parishad Development Officer, Mangalagiri (respondent No.4), in so far as sealed tenders were invited for the shops allotted to them in Pathuri Nagabhushanam shopping complex, as illegal, arbitrary, unjust and void. A further direction was sought to the Mandal Parishad Development Officer, Mangalagiri to exempt the shops allotted to them, vide proceedings dated 20.12.2002, from the tender-cum-public auction notice.

Facts, to the limited extent necessary, are that the appellants claim to have been in possession of small extents of vacant land in Mangalagiri Town; the then Committee of the Mandal Praja Parishad had decided, in the year 2002, to construct a shopping complex in the subject land where the appellants – writ petitioners were carrying on their petty business in small extents of vacant land; they were evicted on the assurance that they would be allotted shops after construction of a shopping complex; the shopping complex came up in the year 2005; the appellants were allotted different shops on lease for a period of three years; the lease period was extended periodically, enhancing the deposits and rents, fixed by the Committee of respondent No.3; the appellants –writ petitioners continued in the shops, allotted to them, till the year 2014; when the rents were enhanced from 200% to 400%, some of the lessees of the shops filed W.P.No.6115 2016; this Court, by order dated 28-07-2016, directed the respondents to conduct open auction for letting out the shops in the said complex with an option to the appellants-writ petitioners to participate in the open auction and bid for the shops; and the appellants filed W.P.No.38990 of 2017 and batch contending that their shops ought not to be put to auction, and their lease should be extended from time to time subject to enhancement of deposits and rents and other conditions.

In their counter affidavit, filed in the Writ Petition, respondent No.3 stated that the appellants - writ petitioners were in occupation of the respective shops, as lessees, paying nominal rent; in order to generate more income from the shops in the shopping complex, respondent No.4 decided to conduct a public auction; except shop No.1, the other 50 shops were put to public auction; the amount quoted by the highest bidder, in the public auction, was far more than the existing rent; and, therefore, the writ petitions were liable to be dismissed.

In the order under appeal, the learned Single Judge noted the contention, urged on behalf of the appellants – writ petitioners, that they were the existing lessees from the year 2005, and land oustees of small extents; as they were assured by the then Committee of respondent No.3, it was not open for respondent No.4 to put the shops to auction by way of a tender notification; the resolution of the Committee of respondent No.3 was to allot shops to the petitioners, and did not contemplate allotment of shops by way of tender-cum-public auction; and, without modifying or altering the said resolution, respondent No.3 ought not to have made the subject shops part of the tender notification.

The learned Single Judge, then, observed that the Committee of respondent No.3, in the year 2000, had mooted a proposal for construction of the shopping complex in the donated land which included small extents of land in which the petitioners were carrying on petty business; after completion of the shopping complex, respondent No.3 passed a resolution to allot shops to the petitioners, as assured to them, without resorting to the tender-cum-public auction mode; such allotment was made on lease basis only for a period of three years; the said lease was extended, from time to time, subject to enhancement of deposit and rent till 2014; there was no contract between the parties that the allotment of shops and extension of lease for every three years, on the enhanced rents and deposit, was automatic and perennial; merely because the petitioners were continuing in the shops from the year 2005 as lessees, they could not seek a beneficial mode for allotment of shops; it was the prerogative of the lessor *i.e.* respondent No.3 to adopt a mode which would fetch the best and highest amounts for the shops in the said shopping complex; no agreement, much less any provision of law which entitled the petitioners for allotment or to continue in the shops, was relied upon, except pleading equity; no indefeasible right accrued to the petitioners merely because of their initial allotment, and extension of lease, in respect of their shops; and, in the absence of any right or any agreement to the contrary, they could not be heard to contend that the subject shops should not be put to public auction.

The order under appeal contains a table comparing the monthly rent being paid by the appellants-writ petitioners and the highest bid received in the auction for a number of shops, and it is evident therefrom that the bid amount received is nearly eight times the monthly rent being paid by the appellants – writ petitioners. The learned Single Judge, therefore, found no justification in permitting the appellants – writ petitioners to continue to remain in occupation of the subject shops at the measly rent they were paying earlier, and granted time till 31.03.2018 to vacate the subject premises on payment of rents, including arrears, if any.

Sri M.Ram Mohan, learned Counsel for the appellants – writ petitioners, would submit that the appellants – writ petitioners were allotted shops in the subject complex on their being evicted from the land in their possession for 15 to 20 years; there was no justification in the respondents seeking to evict them from the respective shops; the appellants – writ petitioners have a legitimate expectation to continue to remain in the possession of the subject shops as they were so assured, on being asked to vacate the subject land in their possession; and the learned Single Judge had erred in holding that the subjects shops should be put to auction, without extending the benefit which the appellants – writ petitioners were granted ever since 2005.

The only plea, other than those urged before the learned Single Judge, is of legitimate expectation. This plea is based on the contention that the appellants – writ petitioners were assured by respondent No.4, vide proceedings dated 20.12.2002, that they would be allotted shops on their voluntary vacating the lands in their possession for the past 15 years.

The proceedings of respondent No.4 dated 20.12.2002, no doubt, notes that the appellants – writ petitioners were in occupation of the subject land for nearly 15 to 20 years before construction of the shopping complex; assurance was given to them that they would be allotted shops in the complex after its construction, on their vacating the subject land; they were to be allotted shops without following any tender-cum-public auction on payment of rents and deposits stipulated therein; the appellants – writ petitioners should deposit six months rent, electricity of Rs.1,200/- and rent of Rs.350/- for some shops and others of Rs.800/- p.m, and to execute an agreement on Rs.100/- non-judicial stamp paper; if the deposit amount and agreement was not sent to the office, within the time stipulated, the allotment of shops would be cancelled; and if any objections were received in relation to allotment orders or with the Government or with any other higher officials, respondent No.4 reserved his right to get the shops vacated without any notice.

The proceedings dated 20.12.2012 does not contain any assurance that the appellants – writ petitioners would be entitled to retain the shops, allotted to them on lease, in perpetuity. In terms of the assurance, the appellants – writ petitioners were allotted shops in the year 2005, and continued to carry on business in the allotted shops for the past nearly 13 years. As the appellants-writ petitioners cannot claim that they should be granted lease of the subject shops in perpetuity, and as the assurance given vide proceedings dated 20.12.2002, is only for allotment of shops and for lease being granted for three years, it is evident that the appellants – writ petitioners cannot claim legitimate expectation, and continue to illegally retain possession of the subject shops forever. As is evident, from the table in the order under appeal, the rents fetched in the auction is nearly eight times the rent which most of the appellants – writ petitioners are now paying. Revenues of respondent No.4 can be augmented by receipt of higher rents on the shops being put to auction. In the absence of any statutory or contractual right conferred on the appellants – writ petitioners, to continue in the shops for ever, there is no justification in their retaining possession of the subject shops, and in depriving respondent No.4 of its legitimate revenues which they would generate on putting the subject shops to public auction.

In an intra-court appeal, under Clause 15 of the Letter Patent, interference is justified only if the order suffers from a patent illegality. We find no infirmity in the order under appeal.

The Writ Appeals fail and are, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, ACJ

N.BALAYOGI, J

Date: 08.03.2018
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