

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.783 of 2016

ORDER:

Heard learned counsel for the petitioner and Sri M.D.Saleem, learned Standing Counsel for the 2nd respondent-Municipality from the written instructions though styled as counter-affidavit, it is submitted that it is received by mail from the original not reached, thereby submitted as instructions, and also heard learned Government Pleader for Municipal Administration for the 1st respondent and notices sent to respondent Nos.3 and 4 proof of service filed is recorded with no representation. Perused the prayer in the writ petition with supporting affidavit and the earlier writ petition order in W.P.No.35496 of 2015, dated 29.10.2015, and other material on record.

2. The prayer in the writ petition reads as follows:

“.....to issue a Writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 2nd Respondent in issuing Endorsement Roc.No.1199/2012/A1, dated 29.12.2015 rejecting the Petitioner's Representation dated 22.12.2015 and proceeding with an auction conducted illegally contrary to the A.P. Municipalities (Regulation of Receipts & Expenditure) Rules, 1968 vide Auction Notification as illegal, arbitrary and contrary to A.P. Municipalities (Regulation of Receipts & Expenditure) Rules, 1968 and set aside the same and further direct the 2nd Respondent to conduct auction in relation to lease amounts pertaining to Shop No.19 at Old Municipal Complex and Shop No.5 at Daily Vegetable Complex belonging to the Respondent Municipality and also

afford reasonable opportunity to the Petitioner to make any offer for payment of such highest bid and pass such other order or orders as may deem fit and proper in the circumstances of the case.”

3. The affidavit in support of the prayer in the writ petition of the writ petitioner is that he entered the premises 25 years back as lessee and continuing from time to time with proportionate increase in the lease amounts payable and earlier notice, dated 24.05.2012, issued in relation to Shop No.5 and in relation to Shop No.19 notice issued on 09.07.2015 to vacate by that month end and he issued reply to the 1st notice on 31.12.2012 to continue as having been continuing for the past 25 years and also for the reason of there are about 72 shops and these shops to be exempted out of it in conducting auction pursuant to the date fixed of 29.10.2015, however the Municipality is directing to vacate without considering his submission and grievance. Undisputedly, W.P.No.35496 of 2015 filed that was ended in dismissal on 29.10.2015. The observations therein are that notices to vacate already issued and any further action not taken immediately to evict not a ground to give any right to continue, much less to deprive revenue to the Municipality by his continuation that too lease period over and apart from it the auction notification not even challenged. Writ Appeal filed was chosen to withdrawn in the earlier ground of litigation dismissed as not pressed with liberty to work out any remedies of representation and the like, vide order, dated 16.12.2015, in W.A.No.1100 of 2015. The main grievance is his representation

not even considered in conducting the auction in issuing the proceedings. A liberty given to make a representation is different from the authorities bound to consider the representation, if any. In fact, the landlord-the Municipality, who have to augment the revenue by conducting public auction subject to the rules, issued notices repeatedly and admittedly from 2012 onwards for the Shop Nos.5 and 19. Any observation in the Writ Appeal of liberty given to make a representation in the absence of directing to pass a reasoned order therein the non-consideration of representation for no change of mind of the Municipality pursuant to the earlier notices given by them way back in 2012 cannot be given a ground much less to complain of violation of principles of natural justice to maintain the second round of litigation covered by the present writ petition, leave apart the contention of the goodwill is unknown is untenable from the amended Rule 12 A of the A.P. Municipalities (Regulation of Receipts & Expenditure) Rules, 1968, which speaks of non-refundable deposit amount being called as goodwill.

4. Having regard to the above, there is no illegality or infirmity in the public auction conducted where the 3rd respondent became a highest bidder for Shop No.5 and though the 4th respondent became highest bidder for Shop No.19, he did not comply with the further terms and the same was cancelled and further auction conducted if any.

5. With these observations, the writ petition is dismissed for nothing to interfere with the auction and the subsequent proceedings.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

15th February 2018

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