

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.19764 of 2009

ORDER:

This Writ Petition is filed to declare the action of the 1st respondent in treating the 2nd respondent as its lessee in relation to Shop No.6, PSR Complex, Chirala, Prakasam District and demanding arrears of amounts from the 2nd respondent vide letter dated 24.08.2009, though it was granted to the petitioner on 29.11.2006 in an auction and the petitioner has been paying the rents with effect from February, 2007 till date, as illegal and arbitrary.

2. The case of the petitioner, in brief, is that the Shop No.6 of PSR Complex is owned by the 1st respondent-Municipality; initially her husband U.Satishkumar took the property on lease in the name of V.Subba Rao from the 1st respondent and has been paying the rents directly to the 1st respondent; in the year 2000 when again an auction was conducted, since the 2nd respondent was a close family friend of the petitioner, he was asked to participate in the auction and the property was obtained on lease in the name of the 2nd respondent; again 1st respondent had conducted the auction in the year 2006 and the petitioner had participated in the auction and the 1st respondent has granted the shop to the petitioner and the petitioner has been paying the rents to the 1st respondent; certain disputes arose between the husband of the petitioner and the 2nd respondent, consequently, the 2nd respondent has filed a suit in OS No.129 of 2007 before the Principal Junior Civil Judge, Chirala against the 1st respondent wherein her husband got impleaded; her husband also filed a suit in OS No.166 of 2007 before the same Court; in the suit OS No.166 of 2007, the 2nd

respondent admitted that her husband has been paying the rents to the Municipality and as the 2nd respondent wanted to do business, he requested the 1st respondent for renewal of lease in his name by enhancement of 33% with effect from 01.02.2007; by the time the auction was conducted on 29.11.2006, petitioner had paid the rent for the month of February, 2007; since February 2007 till date, the petitioner did not commit any default and that the lease period is subsisting till 01.02.2010; the lease period was not extended to the 2nd respondent; the 1st respondent now has issued the impugned endorsement dated 24.08.2009 in the name of the 2nd respondent by treating the 2nd respondent as a lessee and demanding an amount of Rs.2,27,449/- as arrears of rent; the 1st respondent has no right to continue the 2nd respondent as a lessee and specifically has been receiving the rents from the petitioner without any objection; the 1st respondent should treat the petitioner as a lessee instead of the 2nd respondent.

3. On 16.09.2009, when the matter came up for admission, this Court passed the following interim order:

“The case of the petitioner is that the 1st respondent-Commissioner issued endorsement dated 24.08.2009 determining the arrears of rent payable by the petitioner at Rs.2,27,449/- which is inclusive of interest for the period from February 2008 to August 2009.

The learned counsel for the petitioner submits that the petitioner had already paid a sum of Rs.1,40,000/- to the 1st respondent on 07.09.2009 and he is yet to pay balance amount of Rs.87,449/- and because of non payment of the balance amount, the 1st respondent is trying to evict him from the shop in question.

In the circumstances, there shall be stay of eviction of the petitioner from the shop in question subject to the condition that the petitioner pays the balance amount of Rs.87,449/- to the 1st respondent within a period of two weeks from today. If the petitioner fails to pay the balance amount within the stipulated time, then the 1st respondent-Municipality is at liberty to evict him from the shop in question.”

4. Counter-affidavit has been filed by the 1st respondent stating *inter-alia* that the shop in question is owned by the Municipality and the said shop was given to Vutukuri Venkata Subba Rao for lease in the year 1997 for three years; in the year 2000 auction was conducted for the lease of the said shop for a period of three years and the 2nd respondent participated in the auction and he became highest bidder; after expiry of the lease period, the same was renewed in his favour for further period of three years enhancing the rent; thereafter, the lessee did not come forward for renewal of his lease; again auction was conducted on 29.11.2006; none came forward to participate in the auction, the 2nd respondent submitted an application seeking renewal of the lease by enhancing the same at 33. 1/3% on the existing rent and his application was placed before the Municipal Council and the Council did not pass any resolution; the 2nd respondent filed a suit against the Municipality in OS No.129 of 2007; the husband of the petitioner also filed another suit in OS No.166 of 2007; both the suits are pending; the 2nd respondent, who participated in the auction, became highest bidder of the shop in question and lease was renewed up to 2006; any person can pay rent amount on behalf of the lessee and it is immaterial that who paid the rent on behalf of the lessee but the amount so paid is credited only to the account of the 2nd respondent; the 2nd respondent fell in arrears of the amounts and a notice was issued to him to pay the arrears, as he is the lessee for the shop in question and the petitioner is not at all a lessee at all.

5. Heard the learned counsel for the petitioner and the learned standing counsel for the 1st respondent-Municipality.

6. As seen from the pleadings, the husband of the petitioner is not the lessee. The impugned endorsement dated 24.08.2009 was issued to the 2nd respondent to pay the arrears of rent, as he was a lessee of the subject property. The said endorsement was challenged in the present writ petition by the petitioner, though he is not a party to the said proceedings. Even according to the petitioner, the lease period was subsisting only till 01.02.2010. As per the counter-affidavit of the 1st respondent, the 2nd respondent is the lessee. This writ petition is of the year 2009. The lease period has already expired. No lease deed has been filed to show that either the petitioner or her husband was the lessees and that they participated in the auction. In the facts and circumstances of the case, as the lease period has already expired long back and as the petitioner has not produced any lease deed showing that she is continuing as lessee, no further orders are necessary in this writ petition.

8. The writ petition is accordingly closed. No order as to costs. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

Date: 29.11.2018
BSS

KONGARA VIJAYA LAKSHMI, J