

**HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT APPEAL No.928 OF 2018

IN/AND

WRIT PETITION No.21519 OF 2018

COMMON JUDGMENT (ORAL): (Per Hon'ble Sri Justice S.V. Bhatt)

Writ Appeal is directed against the order dated 27.06.2018 in I.A. No.1 of 2018 in W.P. No.21519 of 2018. On 19.07.2018, the order dated 27.06.2018 in I.A. No.1 of 2018 was suspended by this Court. The suspension of the order impugned in the writ appeal enabled the writ appellant to proceed to auction the leasehold rights of the Municipal Shop Rooms i.e., subject matter of the writ petition. On 30.07.2018, the writ appellant conducted public auction of municipal shop rooms in F - Block Complex at Yemmiganuru Town. A few of the respondents in the writ appeal - writ petitioners have become successful bidders. The appellant represented by the Commissioner has placed on record the affidavit dated 27.08.2018 informing the details of auction dated 30.07.2018. In view of the subsequent developments, the learned counsel appearing for the parties have consented to disposing of the writ petition as well as the writ appeal by this order.

2. Heard Sri Vedula Venkataramana, learned senior counsel appearing for the writ petitioners and the respondents in the writ appeal,

and of Sri MD. Saleem, for the appellant and respondents in the writ petition.

3. The parties are referred to as arrayed in the writ petition.

4. The writ petitioners filed W.P. No.21519 of 2018 for a prayer in the nature of writ of *mandamus* declaring the proceedings in ROC No.285/2015/A1 dated 12.06.2018 issued by the Municipality as illegal and unconstitutional. The writ petitioners prayed for a consequential direction to respondent No.2 - Municipality not to evict the writ petitioners from Shop Nos.F-1, F-4, F-5, F-6, F-8, F-9, F-10, F-11, F-12, F-13, F-15, F-16, F-17 and F-18 and renew the lease in favour of the writ petitioners.

5. The case of the writ petitioners is that they are entitled for renewal of the lease by enhancing rent at 33 $\frac{1}{3}$ %. Without considering the claim of the writ petitioners for renewing the lease, proceedings dated 12.06.2018 calling for tenders issued and the request for renewal was rejected by respondent No.2 - Municipality.

6. The writ petitioners were the successful bidders in the auction held pursuant to proceedings dated 10.05.2007. The writ petitioners have paid goodwill amount and also agreed to pay monthly rent to respondent No.2 - Municipality as finalized at that point of time. Petitioner Nos.1 to 8, 10, 12, 13 and 14, either by themselves or through their spouses participated in the auction held on 30.07.2018. These writ

petitioners have also become highest bidders in the auction held on 30.07.2018.

7. Under these circumstances, Sri Vedula Venkataramana, learned senior counsel, submitted that a few of the writ petitioners, since have developed goodwill for the shop in which they are doing business, they were forced to participate in the auction held on 30.07.2018. Being the highest bidders, those writ petitioners have no option except to pay the highest bid and goodwill amount and continue to enjoy the shops owned by respondent No.2 subject to changed terms and conditions. According to the learned senior counsel, respondent No.2 - Municipality cannot and could not have auctioned the leasehold rights without evicting the writ petitioners in accordance with law. In other words, he suggests, possession cannot be claimed unless it is taken through the process known to law. Therefore, to avoid litigation, he submits that cases of all the writ petitioners can be considered subject to rent and goodwill amount offered and treated as highest bid in the auction held on 30.07.2018 for the shop in possession of respective writ petitioners.

8. On the other hand, Sri MD. Saleem, appearing for respondent No.2 - Municipality, contends that the auction was held and the Municipality is under obligation to confirm the lease in favour of the highest bidder. The Municipality will enter into fresh lease with the successful bidders after taking possession from the writ petitioners and enjoy its right or ownership through prospective buyers. According to him, confirmation in favour of the highest bidders - writ petitioners is

not an issue but continuation of non-participant writ petitioners without paying market rent and goodwill amounts to conferring benefit on the non-participants - writ petitioners as well. He submits that respondent No.2 - Municipality will take possession and deliver to the successful bidders or allow continuation of business in the shop, if he or his/her spouse happens to be the successful bidder.

9. We have noted the submission of the learned counsel appearing for the parties. Respondent No.2 - Municipality, during the pendency of the writ appeal, was given liberty to auction leasehold rights in the subject matter. It can be appreciated that Municipality is interested in receiving rent from the subject matter. This Court instead of deciding the nature of right conferred in favour of the writ petitioners and whether respondent No.2 - Municipality can claim possession of the property without recourse to law, etc., as the writ petitioners intend to continue by paying the highest bid and goodwill amount offered in the auction dated 30.07.2018, to meet the ends of justice and also to avoid further litigation in this behalf, the writ appeal and the writ petition are ordered as follows:

- (a) Respondent No.2 - Municipality continues the possession and enjoyment of the writ petitioners subject to writ petitioners paying 5% more than the highest bid and the good will amount as per the auction held on 30.07.2018 for the shop(s) in possession of the writ petitioners.

- (b) The present arrangement is for a period of three (3) years from 30.07.2018 and the direction is issued since the non-participant writ petitioners are also agreeing to pay the highest bid and good will amount as stated supra.
- (c) The writ petitioners, if, are allowed to continue on the above terms, shall not claim equitable consideration for extension or renewal of lease with the completion of three (3) years period referred to above and deliver possession to respondent No.2 - Municipality.
- (d) The rent and the goodwill + 5% more than the highest bid amount as directed above to be paid as per the other terms of auction dated 30.07.2018.
- (e) To avoid ambiguity, respondent No.2 - Municipality is directed to serve a notice with details on the rent and goodwill amount payable by each one of the writ petitioners and the period within which it is payable by registered post with acknowledgement due within two (2) weeks from the date of receipt of copy of this order. Thereafter, the writ petitioners shall comply with the directions as stated in the notice addressed by respondent No.2 - Municipality. No order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the Writ Appeal and the Writ Petition stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

October 25, 2018.
PV

