

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.10255 of 2009

ORDER:

In this Writ Petition, petitioners challenge proceedings, dated 30.04.2009 issued by respondent – Nizamabad Municipal Corporation, Nizamabad, rep. by its Commissioner, cancelling the allotment of the Second Floor in premises bearing No.9-2-52, Tilak Garden, Municipal Shopping Complex, Mustaidpura, Nizamabad.

The brief facts of the case are as follows:

The first petitioner is a society registered under the provisions of the Andhra Pradesh Societies Registration Act, 2001, and the second petitioner is a Degree College established and being run by the first petitioner, in occupation of 1639 sq.feet plinth area and 3278 sq.feet of the First Floor and 3496 sq.feet of the Second Floor in premises bearing No.9-2-52, Municipal Shopping Complex, Mustaidpura, Nizamabad. As the first petitioner desired to have additional space for running the second petitioner college, its Committee approached the Municipal Corporation seeking permission to construct rooms in the Second Floor. Thereupon, the Municipal Corporation vide resolution

CR. No.39, dated 16.07.2008, resolved to allot an area of 3336 sq.feet of the Second Floor to the second petitioner for construction of rooms under Build, Operate and Transfer (BOT) System and the first petitioner has to invest money therefor, the lease shall be for a period of 20 years, the second petitioner shall pay monthly rent of Rs.9,020/-, and the construction cost shall be recovered from the monthly rent fixed by the Executive Engineer, R&B Division, Nizamabad, till it is adjusted, and thereby, bilateral agreement, dated 07.08.2008 was entered between them. Thereafter, the second petitioner was informed through letter, dated 07.11.2008, that the construction should be completed within nine months from the date of receipt thereof duly investing an estimated cost of Rs.25,00,000/- and it shall be entitled to occupy the building for a period of 20 years from the date of completion of the construction. While the matter stood thus, alleging that they had not executed any registered lease deed in favour of the Corporation and not fulfilled the terms and conditions of lease even after issuing the intimation, dated 12.09.2008, the respondent issued the impugned proceedings cancelling the letter, dated 07.11.2008.

On 19.09.2018, a counter-affidavit is filed by the respondent represented by the Commissioner, admitting the construction and occupation of the petitioners over the schedule property under BOT basis and asserting that the lease is for 20 years; that as per the resolution, dated 16.07.2008, the lease deed was executed on 08.11.2008 and thereafter, clarifications were sought from the Director of the Municipal Administration, TS, Hyderabad, for extension; that in terms of Section 148 of the Greater Hyderabad Municipal Corporation Act, 1955, the powers are vested in the Commissioner for grant of as well as cancellation of the lease; that as the petitioners failed to complete the construction within the time stipulated and execute the lease deed on 08.08.2009, the answering respondent cancelled the lease deed/proceedings, dated 07.11.2008; that the petitioners are continuing in the premises by virtue of the interim order passed by this Court and that the petitioners may be directed to execute the lease deed from 08.08.2009.

Learned counsel for the petitioners reiterates the averments mentioned in the writ affidavit and contends that as a matter of fact, lease deed was executed on 07.11.2008, as such, there is no requirement of further executing the lease deed.

It may be noted that as per the counter-affidavit, the lease deed executed in favour of the Corporation is in accordance with law. Though the agreement, dated 07.08.2008 is termed as a lease deed, the same does not satisfy the conditions of lease inasmuch as the building was yet to be constructed, for which, nine months time was granted. In view of the same, at best, the said document can only be termed as an agreement between the petitioner and the respondent Corporation. It is not the case of either of the parties that they would not like to adhere and implement the terms of the agreement entered between them. The stipulated time was 9 months for construction of the building, as is evident from Clause 2 of the agreement, dated 07.08.2008. The respondent does not dispute the fact that the petitioners are already in possession of the subject building and its plea is that the lease agreement is required to be executed by the petitioners in favour of the Corporation from 08.08.2009 by incorporating suitable terms. It may also be noted that the petitioners are willing to execute the lease agreement in favour of the Corporation as per the terms set out in the agreement, dated 07.08.2008.

In those circumstances, this Writ Petition is disposed of with the direction to the petitioners to execute lease deed in favour of the respondent as per the terms set out in the agreement, dated 07.08.2008 and in terms of Section 105 of the Transfer of Property Act read with Section 17 of the Registration Act.

Miscellaneous Petitions, if any pending, shall stand closed.

There shall be no order as to costs.

27th SEPTEMBER, 2018.

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CHALLA KODANDA RAM, J

