

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.6062 OF 2015

ORDER:

This Writ Petition is filed by the petitioners herein against the action of the respondents and in particular the respondent Nos. 2 to 4 in trying to evict the petitioners from their respective shops i.e., shop Nos. 1 to 14 situated adjacent to Z.P.H.S. School, Enkur, Khammam District without initiating any proceedings, as illegal arbitrary and violative of principles of natural justice.

This Court, on 11.03.2015 while issuing notice before admission to the respondents in the above writ petition was pleased to grant interim direction not to evict the petitioners from their respective shops subject to the condition that all the petitioners pay rents upto date including arrears if any by the end of March, 2015 by depositing the same with the Zilla Parishad High School viz., 2nd respondent herein.

Counter-affidavit along with vacate petition has been filed on behalf of respondent No.3.

Counter affidavit on behalf of respondents 6 and 7 who were impleaded in the Writ Petition by court order dated 01.04.2015 in W.P.M.P. No.11945 of 2015 is also filed.

Heard Sri K. Pavan Kumar, learned counsel for the petitioner, learned Government Pleader for School Education, learned Government Pleader for Revenue and Smt. K. Aruna representing respondents 6 and 7.

The case as pleaded by the petitioners is that they have been permitted to carry on business in the land of the 2nd respondent school by putting up shops therein and have been carrying on the business for the last 20 years and thus, the petitioners claim that the respondents be restrained from evicting the petitioners from their shops without following due process of law.

As seen from the writ averments and the counter affidavit filed, the fact of petitioners carrying on its business activities in the land belonging to the 2nd respondent school is not in dispute. The claim of the petitioners is that they have been permitted to run their businesses on the land belonging to the 2nd respondent school subject to payment of rent to the school authorities and having been paying rents regularly except in few cases where due to difficulties faced in business, there was some delay in payment of rents. Further, it is also submitted that the rent has been enhanced from time to time and thus, no prejudice is caused to the 2nd respondent school if the petitioners are allowed to continue in shops.

On behalf of the 2nd respondent, it is contended that the 2nd respondent school was established in an extent of Ac.4.34 gts donated by one Smt. Maddineni Appamma, W/o Muttaiah and after constructing the school building, there was some open land left out from and out of the total area of Ac. 4.34 gts, towards Enkur to Thimmaraopet R&B Road. In order to get some funds to the school, the school developing committee, along with villagers in the year 1993, decided to divide the vacant land forming part of the larger extent of Ac.4.34 gts donated by Smt. Maddineni Appamma

into small plots numbering to 25 for being allotted to small businessmen through auction for a nominal rent on yearly basis. Learned Government Pleader submits that out of the 25 plots, 2 plots were utilised for constructing a gate to the school and one plot is vacant beside the gate. The remaining plots were allotted to small businessmen through auction with a nominal rent of Rs.50/- per month with the condition that no permanent construction in the place allotted shall be made and the plot shall be handed over to the school management committee for conducting fresh auction every year to which the petitioners had agreed to in the initial stage. Learned Government Pleader would submit that despite the petitioners having agreed to handover the plots to the school management committee for conducting fresh auction every year, the petitioners never allowed the school development committee to conduct auction and not even increase the rent as per the condition of initial allotment. It is stated that though the petitioners have enhanced the rent, most of the petitioners have stopped paying rents and have also made permanent constructions contrary to the condition of allotment that no permanent structure be made in the said land of the school.

Learned Government Pleader would also draw attention of this Court to the counter-affidavit filed and submit that the petitioner Nos. 2, 3, 4, 6, 8, 9, 10, 12 and 14 are not in possession of the shops and have let out the same to third parties without any authority and permission from the school authorities. Learned Government Pleader would also further submit despite this court directing the petitioners to pay the arrears of rent and also continue to pay the rents regularly to the 2nd respondent school,

the petitioners have not been paying rents regularly. Having regard to the same that the respondent school made a complaint before the 3rd respondent who directed the 4th respondent to conduct enquiry. In the enquiry conducted by the 4th respondent, it was proved that the petitioners have contravened the terms of allotment of plots and also have been in default of rent. Upon submission of the said report by the 4th respondent, the same was discussed in the meeting held in July and October, 2014 wherein it was resolved to have the existing tenants vacated and conduct fresh auction of the said plots as per resolution. Accordingly, the 3rd respondent on 03.01.2015 directed the 4th respondent to take necessary action to evict the petitioners and for conducting fresh auction and the 4th respondent in turn vide letter dated 17.01.2015 directed the Tahsildar to take steps to evict the petitioners. The petitioners despite having received notice from the school management committee for non-payment of rent in time and also being aware of the proceedings before the Collector and the enquiry that has been caused as directed by the 3rd respondent have approached this Court by filing the present writ petition to frustrate the entire process. Learned Government Pleader would submit that a huge amount of arrears exceeding a sum of Rs.6,83,000/- is due to the 2nd respondent from the petitioners. Learned Government Pleader submits that it is only after the matter was listed before this Court since October, 2019, rents have been deposited by some of the petitioners only during the months of October, and November, 2019 in lumpsum, and have thus, committed default of complying with the orders of this court and thus no indulgence is called for in favour of the petitioners.

When the matter had come up for hearing earlier on 05.12.2018, this Court enquired from the counsel for the petitioner as to whether the petitioners have complied with the order passed by this court on 11.03.2015 by depositing the rents up to March, 2015 and also the rents beyond March, 2015, the counsel for the petitioner sought time to ascertain the fact. Thereafter, though the matter had come up on 14.12.2018, the matter was directed to be listed for final hearing. Thus, the matter had come up on 24.10.2019 and was directed to be listed on 31.10.2019 at the request of the parties. Thus, the matter had come up on 31.10.2019 when initial submissions were made on behalf of either side and having regard to the submissions made, this court directed the matter to be listed on 04.11.2019 under the caption 'for orders'.

In the meantime a rejoinder affidavit has been filed by the petitioner No.7 to the counter affidavit sworn to on 25.04.2018, filed on behalf of respondent No. 3. By the said rejoinder affidavit, it is claimed by the petitioner that the petitioners have constructed shops on the land belonging to R&B Department and the petitioners reserve their right to make appropriate application to the department for regularisation of the same in terms of Government Policy. Further, by the said rejoinder affidavit, while denying the averment of the respondent that auction of plot is to be held every year and that the tenant should not make any permanent construction, it is stated that as per the understanding arrived at during the time of allotment, the petitioner themselves had invested their personal money and made construction of small

shop with asbestos sheet roofs admeasuring roughly 14 X 20 feet. It is stated that the petitioners are carrying on petty business since very long period without any interruption and it has also been denied that some of the petitioners have sublet the shops to other persons for higher rents. By the said rejoinder affidavit, while denying the petitioners are in huge arrears to a tune of Rs.6,83,000/- to the 2nd respondent, it is admitted that since petitioners are doing petty business due to financial hardship, they fell in arrears for few periods. It is also further stated that the rent was revised periodically and presently the petitioners are making payment of rent of Rs.1,000/- per month and the bonafides of the petitioners would be evident from the fact that they have been paying substantial amounts towards rents regularly.

Having given due consideration to the submissions made on either side and having regard to the documents which are placed before this court, the petitioner can be divided into two categories:

- (i) tenants who are in possession of the plot carrying on business by themselves viz., petitioner Nos.1, 5, 7, 11 and 13.
- (ii) tenants who are found not to be in possession by themselves and having sublet the plot/shop viz., petitioner Nos.2, 3, 4, 6, 8, 9, 10, 12 and 14.

Though the claim of the petitioner as made in the rejoinder affidavit viz., the petitioners are running small businesses in the R&B road and the petitioners are reserving right to approach the authorities for regularising the same, is self-contradictory for the reason that the petitioners on one hand claim that it has been allotted plot belonging to the 2nd respondent for which it is being

claimed that the petitioners are paying rents to the 2nd respondent authority, on the other hand are making a claim that the petty shops are on R&B road. If the claim of the petitioners that the shops are on R&B road land is correct and to be accepted, there was no need or necessity for the petitioners to have paid the rents to the school authorities all through this period, including the rents which are paid as latest as in the month of October and November, 2019. Further, when the petitioners initially approached this court by filing the writ petition, no such plea is taken and on the contrary, it is specifically averred that the petitioners were carrying on the petty business in the 2nd respondent school land which was allotted to them. The plea to the contrary as set-up in the rejoinder affidavit is liable to be rejected.

Further, as seen from the statement furnished before this court, though the petitioners approached this court in March, 2015 and obtained interim orders they did not continue to pay the rents regularly thereafter. It is only after the matters were listed before this court on 24.10.2019 and thereafter the rents have been paid in lumpsum on 24.10.2019, 29.10.2019, 31.10.2019, 1.11.2019 and 02.11.2019. Even the 7th petitioner who has sworn to the rejoinder affidavit has paid rents from January, 2019 to October, 2019 only on 29.10.2019 and 30.10.2019 and thus, the petitioners cannot claim that they have been paying rents regularly. Further, as seen from the statement furnished before this court in respect of shop No.3, 4, 5 and 6 (open plot), 20 and 23, no rents are being paid since January, 2016. Even in respect of the period prior to January 2016, there are arrears of rent.

Further, in respect of plot No.6, the rents due from 2015 onwards have been paid in October and November, 2019. Similarly, for plot Nos.8 and 9, the petitioners have paid rents for the period 2015 onwards intermittently during the year 2017 to 2019. So also the rents in respect of plot No.10, the petitioner has paid rent from March 2016 onwards only on 31.10.2019 and 02.11.2019. The said conduct on the part of the petitioners in not paying the rents in time to the 2nd respondent authority would clearly go to show the claim of the petitioners that they have been paying rents regularly is a self serving statement and lacks bonafides on the part of the petitioners. The petitioners having approached this court by filing the writ petition and obtaining interim orders, ought to have complied with the interim orders of this court scrupulously, which the petitioners failed to comply as noted hereinabove.

Further, the denial by the petitioners of the claim of the 2nd respondent that the amounts to a tune of Rs.6,83,000/- as being due also cannot be accepted, for the reason that the payments towards arrears of rents were made in lumpsum only during the period October and November, 2019 as noted herein above. Thus, the claim of the respondents with regard to substantial amounts being due from the petitioners cannot be said to be without any basis to be brushed aside. Further, since during the enquiry by respondent no.4, it was found that petitioners Nos. 2, 3, 4, 6, 8, 9, 10, 12 and 14 are not in actual possession and had sub-let the place allotted to them to others and also having regard to the fact that there is no specific denial forth coming to the said assertion, in the rejoinder affidavit, it is clear that the petitioner Nos. 2, 3, 4, 6, 8, 9, 10, 12 and 14 are not entitled for any relief or protection

from this court (though some of the petitioners like the tenant of plot no. 6 and 8 have paid rents in October and November, 2019) for not being in possession by themselves as found during the enquiry conducted by the 4th respondent upon the directions of the 3rd respondent and having acted contrary to the condition / understanding on the basis of which such plot was allotted, apart from being in default of payment of rent prior to filing of writ petition and also subsequently. A copy of the statement of rents due and paid as placed before this Court shall form part of this order.

However, having regard to the fact that petitioner Nos.1, 5, 7, 11 and 13 being in possession of the shops and carrying on the business by themselves and having paid rents, though not in time and some amounts still being due to be received from them, this Court is of the view that interest of equity and justice would be met, if the said petitioners are not evicted and permitted to continue to carry on the business from the said plots by paying the highest rent that would be fetched in respect of the other plot /shops, which are now being directed to be evicted from the other petitioners, for being let out through public auction for the next rent tenure period as may be determined by the 3rd respondent. In order to avail the protection being extended by this court, the above mentioned petitioners viz., 1, 5, 7, 11 and 13 shall execute / furnish an undertaking to the 3rd respondent through the 2nd respondent on or before 31.12.2019, agreeing to –

- i) pay the highest rent that is fetched in respect of other plot / shop that would be let-out through public auction ;

- ii) the protection above granted being co-terminus with the rent tenure / period as may be determined by the 3rd respondent authority in respect of such other plot / shops ; and
- iii) to abide by the other terms and conditions as may be made applicable for such plot / shops being made applicable to the petitioners mentioned herein also including entering into agreement, if any.

In the event, if the petitioners Nos. 1, 5, 7, 11 and 13 in this writ petition, fail to execute / furnish such undertaking, the respondents are free to have the petitioner Nos.1, 5, 7, 11 and 13 also evicted and include those shops also in the auction schedule for being let-out.

Further, the above order passed by this Court shall not preclude the authorities from recovering the arrears of rent due if any from the petitioners in accordance with law.

With the above observation and direction, the Writ Petition is disposed of.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 11.12.2019

MRKR